



# County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA  
Chief Executive Officer

February 28, 2012

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

## ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

#18 FEBRUARY 28, 2012

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

Board of Supervisors  
GLORIA MOLINA  
First District

MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

Dear Supervisors:

### RECOMMENDATION TO APPROVE A SOLE SOURCE CONTRACT FOR WORKERS' COMPENSATION CLAIMS ADMINISTRATION SYSTEM MAINTENANCE AND HOSTING SERVICES (ALL DISTRICTS – 3 VOTES)

#### CHIEF INFORMATION OFFICER RECOMMENDATION:

APPROVE (X)      APPROVE WITH MODIFICATIONS ( )      DISAPPROVE ( )

#### SUBJECT

This letter seeks your Board's approval for a sole source Contract with P&C Claims, Incorporated (P&C), for maintenance and hosting services to support the workers' compensation claims administration system and to upgrade the system and convert the files from the 27-year-old database to a modern database, for a base term of three years, with three, one-year options to extend the contract, effective March 1, 2012, at a maximum contract cost of \$2,885,232 including extensions.

#### IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Chairman to execute the attached sole source contract with P&C for application hosting and maintenance services to support the Workers' Compensation Claims Administration System (System), upgrade the system and correct the database. The base contract will be effective for three years, commencing March 1, 2012, with a maximum contract sum not to exceed \$1,519,684, and includes an option to extend services up to three additional one-year terms.
2. Delegate authority to the CEO to execute the software agreement pursuant to the provisions of this contract.
3. Direct the CEO to immediately initiate the Request for Proposals (RFP) process for a workers' compensation claims administration system.

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4. Direct the CEO to report back in July 2012, and every six months thereafter, on the status of the RFP development and the conversion of the current workers' compensation system to a modern database system.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The contractor, P&C, is the successor company to GenSource, which was the original contractor that provided, installed, custom designed, maintained, and hosted the System. Currently, 300 users, including the County of Los Angeles (County) workers' compensation third party administrators (TPAs), medical management and cost containment contractors, short-term and long-term disability benefit administrator, CEO Risk Management Branch, County Counsel, and other County departments, depend on the System's applications to manage the County's workers' compensation claims administration program, process indemnity payments to injured employees, issue medical payments to healthcare and ancillary service providers, generate State-mandated benefit notices, and issue reports required by State and Federal entities. Failure to issue timely payments will subject the County to costly penalties and potential loss of its certificate to self-insure. The proposed contract maintains the current system, while providing a significant system upgrade and conversion to a modern database system at a very cost-effective price.

#### **Implementation of Strategic Plan Goals**

The recommended actions are consistent with the County's Strategic Plan Goal 1, Operational Effectiveness, by ensuring continuous and effective service delivery systems. The contract and system are in accordance with the current CEO Business Automation Plan (BAP).

#### **FISCAL IMPACT/FINANCING**

The maximum base term contract cost will be \$1,519,684, which is itemized as follows:

- A maximum \$749,184 total for system maintenance and support, including software upgrades to support 300 users;
- A maximum \$310,500 (\$103,500 per year) for State of California-mandated electronic transfer of workers' compensation claims data from the System to the California Department of Industrial Relations (DIR). The contract assigns responsibility to P&C for ensuring the information collected by the County's TPAs is transferred to DIR;
- A maximum \$60,000 (\$20,000 per year) for user training, as may be required by the County;
- A maximum of \$300,000 to upgrade the GenIris system to ClaimsVision; and
- A maximum of \$100,000 in funding for system customization, including the eCAPS interface.

In the event the County elects to extend the contract for services beyond the base term, the maximum cost will not exceed \$2,885,232, which will be the total for six years. The cost for each extension is as follows:

First Year Extension	\$ 483,288
Second Year Extension	\$ 438,484
Third Year Extension	\$ 443,776
Total	\$ 1,365,548

The base term and any contract extension costs will be paid out of the Workers' Compensation Trust Fund.

Expenditures for the Fiscal Year 2010-11 contract year were \$356,932. This included costs for the following:

- \$ 240,000 (\$20,000 per month) for system maintenance;
- \$103,500 for electronic transfer of workers' compensation claims data to the DIR; and
- \$13,432 for optional work/customization.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

On March 1, 2007, your Board approved a sole source contract with GenSource, a Division of StrataCare Inc. Effective December 31, 2009, all assets of GenSource were assigned to P&C.

The contractor, P&C, is a recognized leader in the workers' compensation information system industry. The firm has an extensive knowledge of the County's workers' compensation program and has provided and continues to provide software modifications and upgrades at minimal expense. All users agree that while the existing system is not state-of-the-art, it has continued to deliver consistent and reliable performance since 1985. P&C has developed an upgrade to their GenIris claims administration system which is being marketed under the name ClaimsVision. They are offering this product to existing users at a reduced rate if the upgrade is purchase in 2012. P&C states the reduced rate of \$300,000 is less than half of the cost of the ClaimsVision system to new clients.

By comparison, we have identified costs for other agencies who have or are planning to upgrade to modern workers' compensation data base systems:

<b>Business/Organization</b>	<b>Migration Date</b>	<b>New/Upgraded System Cost</b>	<b>5-Year Maintenance fees</b>
City of Los Angeles	March, 2012 (planned)	\$2.85M	\$1.5M
San Bernardino County	2007-2008	\$1.3M	\$375,000
Keenan & Associates (TPA) approx 75% the size of L. A. County	2007	Approximately \$2M	Approximately \$1M (includes liability and disability systems)
County of Los Angeles	2012 (proposed)	\$300,000 - \$400,000	\$1.9M

The CEO recommends allowing P&C to implement their ClaimsVision system now for the following reasons:

- Pricing of the upgrade is reasonable compared to other options;
- P&C would be responsible for the migration and reconciliation of data between their two systems. If we were to migrate to a different vendor, neither P&C nor the new vendor would be obligated to support this transition. Having the same vendor handle both sides of the migration eliminates conflicts between vendors and results in substantial savings in both work hours and conversion costs for the County;
- There is a backup system (GenIris) built in, with full support from P&C, while the County makes the transition; and
- ClaimsVision is a modern database that would pave the way for an easier transition and attract more competitive bids from other vendor systems in the future.

The CEO Risk Management Branch intends to begin the RFP process for a new system immediately. Attached is a timeline showing the projected schedule for the RFP and also for the ClaimsVision conversion (Attachment I). The timeline runs the RFP development and the data system upgrade and conversion process concurrently, which will be challenging given limited CEO staff resources, but should be doable. The extension proposed at this time will allow P&C to complete the conversion of the current system to the upgraded ClaimsVision and the continuation of services under this system if, and until, a replacement system is implemented. Once ClaimsVision goes live, any final modifications needed to the RFP will be made and the RFP released immediately afterwards.

The CEO will report back to your Board in July 2012, and every six months thereafter, on the status of the RFP and data conversion process.

The attached contract has been approved as to form by County Counsel and reviewed by the Chief Information Officer (CIO Analysis Attached). Both concur with the CEO's recommendations.

### **CONTRACTING PROCESS**

On December 8, 2011, we notified your Board of our intent to negotiate a sole source contract with P&C (Attachment II). The system software is proprietary to P&C; therefore, no other vendor can provide the necessary maintenance and support.

### **IMPACT ON CURRENT SERVICES**

Continuation of this system is essential to ensure timely and accurate issuance of County workers' compensation benefits and payments, and to avoid potential imposition of State penalties for late benefit payments. It will allow the Department to issue an RFP and provide time for system upgrade and data conversion before a replacement workers' compensation claims administration system is implemented.



The Honorable Board of Supervisors  
February 28, 2012  
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**CONCLUSION**

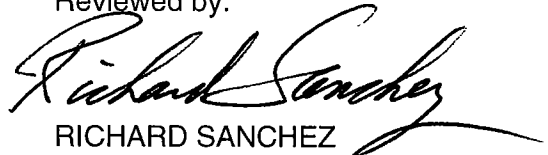
Upon approval by your Board, please return two signed originals of the Contract and one adopted copy of the letter to the CEO Risk Management Branch, attention Laurie Milhiser, County Risk Manager.

Respectfully submitted,



WILLIAM T FUJIOKA  
Chief Executive Officer

Reviewed by:



RICHARD SANCHEZ  
Chief Information Officer

WTF:ES:RS  
LM:RC:KF:tv

Attachments

c: Executive Officer, Board of Supervisors  
County Counsel  
Chief Information Officer

<b>Request For Proposal</b>					<b>Conversion To ClaimsVision</b>				
<b>Project Task</b>	<b>Project Begin</b>	<b>Project End</b>			<b>Project Task</b>	<b>Project Begin</b>	<b>Project End</b>		
<b>RFQ Select Consultant</b>	3/1/2012	3/28/2012			<b>System Evaluation</b>				
<b>Conduct Kick-off Meeting</b>	4/2/2012	4/2/2012			California Compliance	4/3/2012	5/1/2012		
<b>Phase 1 Milestone</b>	4/2/2012	4/2/2012			Business Rules Development	4/3/2012	5/1/2012		
					User Technical Requirements	4/3/2012	5/1/2012		
<b>Needs Assessment</b>					Security/Authorization Levels	4/3/2012	5/1/2012		
<b>Security and System Parameters</b>	4/3/2012	5/1/2012							
<b>Application Menu</b>					<b>Create Project Plan</b>	5/2/2012	5/7/2012		
<b>Examiner Menus</b>	4/3/2012	6/29/2012							
<b>Benefit Notice Menu</b>	4/3/2012	4/30/2012			<b>Conversion Migration Customization</b>	5/8/2012	2/6/2014		
<b>Payment Configuration</b>	5/1/2012	5/15/2012			<b>Interface &amp; Production Testing</b>	12/2/2013	2/19/2014		
<b>Vendor Table Configuration</b>	5/1/2012	5/31/2012			<b>Demo &amp; Training</b>	12/2/2013	2/19/2014		
<b>Document Generation Requirements</b>	4/3/2012	4/30/2012							
<b>Document Storage Requirements</b>	4/3/2012	4/30/2012			<b>Go Live</b>	3/3/2014	3/3/2014		
<b>Disability Management</b>	4/3/2012	4/30/2012							
<b>Master Coding</b>									
<b>Cause, Nature, Body Part</b>	4/3/2012	4/30/2012							
<b>ICD 9+ Coding</b>	4/3/2012	4/30/2012							
<b>NCCI Injury Coding</b>	4/3/2012	4/30/2012							
<b>Organization + Sub-Organizations</b>	4/3/2012	4/30/2012							
<b>Occupation/Item</b>	4/3/2012	4/30/2012							
<b>Status - Sub-Status</b>	4/3/2012	4/30/2012							
<b>System Reporting</b>									
<b>Search Capability</b>	5/1/2012	5/29/2012							
<b>Standard Reporting</b>	5/1/2012	5/29/2012							
<b>Production Reporting</b>	5/1/2012	5/29/2012							
<b>Ad-Hoc Reporting</b>	5/1/2012	5/29/2012							
<b>Report Migration</b>	5/1/2012	5/29/2012							
<b>MMSEA</b>	5/1/2012	5/29/2012							
<b>FAIRIS/NOI</b>	5/1/2012	5/29/2012							
<b>WCIS</b>	5/1/2012	5/29/2012							
<b>Interface Capability/Functionality</b>									
<b>Bill Review</b>	6/1/2012	6/29/2012							
<b>Utilization Review</b>	6/1/2012	6/29/2012							
<b>Payroll</b>	6/1/2012	6/29/2012							
<b>eCAPS</b>	6/1/2012	6/29/2012							
<b>Other County Systems</b>	6/1/2012	6/29/2012							





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**WILLIAM T FUJIOKA**  
Chief Executive Officer

December 8, 2011

To: Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

Board of Supervisors  
GLORIA MOLINA  
First District

MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

**NOTICE OF INTENT TO NEGOTIATE A SOLE SOURCE CONTRACT FOR  
AUTOMATED WORKERS' COMPENSATION SYSTEM**

In accordance with your Board Policy number 5.100 regarding sole source contracts; this is to inform you that the Chief Executive Office (CEO) intends to negotiate a sole source contract with P&C Claims, Inc., (P&C) for the continued provision of an automated workers' compensation claims administration system. A copy of the original contract is attached for your reference.

The workers' compensation claims administration and information system (System) software, licenses, and system maintenance services has been provided by P&C (previously GenSource) since 1985, initially through purchase orders and eventually via the current sole source agreement, which will terminate on February 29, 2012. Nearly 300 users, including workers' compensation third party administrators (TPAs), medical management cost containment contractors, CEO, County Counsel, and other County staff depend upon the System's applications to manage the County's self-insured workers' compensation program. The System provides benefit delivery and reporting applications that allow the County to comply with State and Federal mandates. For information purposes, we have attached a copy of our last contract with P&C.

The CEO is actively undergoing a comprehensive assessment of its various automated claims administration systems (as well as its internal procedures) for processing workers' compensation, automobile and general liability, and medical malpractice/hospital liability claims. In order to allow sufficient time to accurately assess the County's needs and to survey the trends in the marketplace, we plan to continue with a sole source agreement with P&C to ensure that these crucial System functions continue without interruption until such time that an appropriate solicitation can be conducted.

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Each Supervisor  
December 8, 2011  
Page 2

Unless otherwise instructed by your Board within two weeks, we will proceed with negotiating the sole source contract.

If you have any questions, please have your staff contact Ellen Sandt at (213) 974-1186 or [esandt@ceo.lacounty.gov](mailto:esandt@ceo.lacounty.gov).

WTF:ES  
LM:KR:KF:tv

Attachment

c: Executive Officer, Board of Supervisors  
County Counsel  
Chief Information Officer



DAVID E. JANSSEN  
Chief Administrative Officer

County of Los Angeles  
**CHIEF ADMINISTRATIVE OFFICE**  
713 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012  
(213) 974-1101  
<http://cao.lacounty.gov>

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

February 13, 2007

# 19

FEB 13 2007

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

Board of Supervisors  
GLORIA MOLINA  
First District

YVONNE B. BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

Dear Supervisors:

**RECOMMENDATION TO APPROVE A SOLE SOURCE CONTRACT  
WITH GENSOURCE, A DIVISION OF STRATACARE CORPORATION,  
FOR A WORKERS' COMPENSATION CLAIM ADMINISTRATION SYSTEM  
(ALL DISTRICTS – 3 VOTES)**

**CHIEF INFORMATION OFFICER RECOMMENDATION:**

APPROVE (X)    APPROVE WITH MODIFICATIONS ( )    DISAPPROVE ( )

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and instruct the Chairman to execute the attached sole source Contract with GenSource, A Division of StrataCare Inc., (GenSource), for application hosting and professional services to support the workers' compensation claim administration and information system (System). This Contract will be effective for a three (3) year term, commencing March 1, 2007, with a maximum contract sum not to exceed \$1,544,500, and includes an option to extend maintenance services for up to two (2) additional one (1) year terms, at a total cost of \$927,000, subject to adjustment in electronic data transfer costs which may be incurred to comply with State of California workers' compensation reporting requirements.
2. Delegate authority to the County of Los Angeles (County) Chief Administrative Officer (CAO), or his designee, to approve and execute extensions and change notices, and purchase additional user software licenses, pursuant to the provisions of the Contract.

3. Delegate authority to the CAO to execute the software escrow agreement pursuant to the provisions of the Contract.
4. Instruct the Auditor-Controller to make payments for System costs, as invoiced and validated by the CAO.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

Approval of this recommendation will ensure uninterrupted availability of this critical System. Workers' compensation claim administration and information system software licenses and system maintenance services have been provided by GenSource since 1985. Nearly 300 users, including the County's workers' compensation third party claim administration firms (TPAs), CAO, County Counsel, and other County staff depend upon the System applications to manage the County's workers' compensation claim administration program, process indemnity payments to injured workers, and issue medical payments to healthcare and other service providers.

Presently, GenSource software licenses and software maintenance are obtained through purchase orders processed under the authority of the Internal Services Department (ISD). Future System costs for hosting, maintenance, and support services will exceed ISD's purchasing authority, thereby prohibiting the CAO from securing the desired services through the purchase order process. We are therefore requesting your Board's approval of this Contract to ensure these crucial System functions continue without interruption.

Approval of this Contract will also enable the County to implement a major upgrade of the System software, as well as enhance the technical architecture and system environment to a network-based model, to enable the County to fully utilize the latest System capabilities. These capabilities include enhanced workers' compensation claim administration and management tools, expanded reporting capabilities, and improved communication of claim information between TPAs and client County departments.

**Implementation of Strategic Plan Goals**

The recommended actions are consistent with the County's Strategic Plan Goal Three, Organizational Effectiveness, by ensuring that service delivery systems are efficient, effective, and goal oriented; and Goal Four, Fiscal Responsibility, by strengthening the County's fiscal capabilities by providing critical data for financial decision making. The Contract and System are also in accordance with the CAO Business Automation Plan (BAP), as it meets the CAO's long-term strategies to upgrade mission-critical applications.

**FISCAL IMPACT/FINANCING**

These services will be provided for the initial three (3) year term at a cost of \$1,544,500, itemized as follows:

- A one-time charge of \$154,000 for the first year start-up, migration and implementation of the upgrade from the current GenSource Legacy System utilized by the County to the latest System application, GenComp for Windows (GCFW), which includes the perpetual GCFW software license;
- A maximum \$720,000 (\$240,000 per year) for System maintenance and support, including software upgrades to support 300 users;
- A maximum \$310,500 (\$103,500 per year) for State of California-mandated electronic transfer (ET) of workers' compensation claim data from the System to the California Department of Industrial Relations (DIR). The Contract assigns responsibility to GenSource for ensuring that information collected by the County's TPAs is transferred to DIR. DIR utilizes this data to assist in its oversight of the California workers' compensation system, and obtain statistical information for research purposes;
- A maximum \$60,000 (\$20,000 per year) for user training, as may be required by the County; and
- A maximum \$300,000 (\$100,000 per year) in funding for customization costs, should changes in System programming be necessary to address unanticipated County service needs, such as DIR-mandated changes in reporting requirements, increased maintenance and support service costs, should the number of County System users exceed 300, and for software escrow fees.

If the County elects to extend the GenSource contract for System maintenance services through years four and five, the costs will be:

- A maximum \$240,000 per year for maintenance and support, including software upgrades to support 300 users;
- A charge of not less than \$103,500 per year for ET of workers' compensation claim data from the System to the State. This ET cost may increase should new vendor programming be required to comply with changes in reporting and/or electronic billing requirements as mandated by the State;
- A maximum \$20,000 per year to pay for user training, as may be required by the County; and



- A maximum \$100,000 per year for customization costs, should changes in System programming be necessary to address unanticipated County service needs, such as DIR-mandated changes in reporting requirements, increased maintenance and support service costs, should the number of County System users exceed 300, and for software escrow fees.

Funding is available in the Workers' Compensation Trust Fund to pay for these costs.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

GenSource is a recognized leader in the workers' compensation information system industry, and provides services to many large public and private sector clients, including the State of California, County of San Bernardino, the Walt Disney Company, and Blue Cross of California. They have extensive knowledge of the County's workers' compensation program, and have accommodated previous County requests for software modifications and upgrades at minimal expense, or at no additional cost to County by incorporating them within their base application releases. GenSource's successful processing of millions of transactions over the past 20 years has demonstrated their ability to deliver consistent and reliable performance.

Approval of this Contract will enable County TPAs to upgrade to the latest GCFW software release. The Contract also provides for GenSource to host the County's data on its database and application servers. County data are presently hosted on servers maintained by ISD; however, GenSource can provide hosting services at a substantially lower cost. GenSource hosting will also enable the County to receive a data warehouse with related maintenance at no additional cost, as well as automatic global System updates, eliminating the County administrative cost associated with loading of such software releases onto the County servers and individual user computers.

The GenSource database server is exclusively dedicated to the County's data only, and is located in a secure area of GenSource's internal network. The Chief Information Officer (CIO) concurs that these security measures are appropriate. The Contract also requires that GenSource place the GCFW System source code in an escrow account to ensure the County's access, should circumstances arise that would prevent GenSource from continuing to provide the System maintenance services.

The attached Contract was approved as to form by County Counsel, and reviewed by the CIO; they concur with these recommendations. This is not a "Proposition A" contract, and, therefore, not subject to the Living Wage Program (*Los Angeles County Code Chapter 2.201*).

### **CONTRACTING PROCESS**

On February 23, 2006, we notified your Board of our intent to negotiate a sole source Contract with GenSource. Because the System software is proprietary to GenSource, neither the County's liability Risk Management Information System (RMIS) vendor, nor any other alternative vendor, can provide the necessary product maintenance; therefore, a sole source Contract is needed.

In addition to ensuring the State-mandated workers' compensation claim services continue, the Contract will also provide the County with the time needed to assess System-user needs to determine if future changes in the System and/or vendor are desirable, and if a competitive solicitation process should be initiated. This assessment will include evaluation of the feasibility of consolidating these System functions with those of RMIS.

The following are areas within the negotiated Contract that depart from the County's standard terms and conditions. The CAO believes these negotiated changes are commercially reasonable and do not pose undue risk or burden to the County. County Counsel and CIO have reviewed these issues and concur with these changes:

**Assignment and Delegation** - The Contract includes this provision requiring that GenSource obtain the County's written consent to an assignment. GenSource has insisted upon including an exception that a merger or the sale of all, or substantially all of, GenSource's assets shall not constitute an assignment, but rather be considered a permitted transfer. However, GenSource is obligated to require that any successor Contractor shall be explicitly bound by the terms and conditions of this Contract.

**Indemnification** - A statement has been added to the County's standard Indemnification provision specifying that GenSource shall not be obligated to indemnify the County for liability arising from the County's sole negligence due to its acts or omissions relating to this Contract.

**Limited Warranty/Disclaimer and Limitation of Liability** - The negotiated Contract limits GenSource's liability for damages sustained by County, and County's exclusive remedy in such an event, to the refund of all license fees paid to date, or the sum of \$20,000, whichever amount is greater, should the System fail to meet the specifications. GenSource will not be liable for any incidental, indirect, special, or consequential damages that may result from the use or inability to use the System. However, GenSource remains obligated to indemnify any third parties seeking damages, and to assume any loss which would be claimable under the commercial insurance policies, which GenSource is required to maintain pursuant to the Contract.

Honorable Board of Supervisors  
February 13, 2007  
Page 6

Most Favoured Public Entity - GenSource would not agree to this provision.

Termination for Convenience - The standard provision enables the County to terminate the Contract at its sole discretion at any time when it is deemed to be in its best interest. Under the negotiated alternative language, the Contract can be terminated for convenience following the third anniversary of the effective date, to enable GenSource to recover the costs it is investing in the upgrades and preparation for hosting the County's data. This three-year (3) period will also allow the County to find and transition to a new service provider, should this be found necessary. All other standard County termination provisions remain unchanged and are included within the Contract.


**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Continuation of this System is essential to ensure timely and accurate issuance of County workers' compensation benefits and payments, and to avoid potential imposition of State penalties for late benefit payments. Approval of the Contract will also ensure the County's continued compliance with mandatory California workers' compensation claim information reporting requirements, and with the CAO's long-term strategy to upgrade mission-critical applications.

**CONCLUSION**

Upon approval by your Board, please return two signed originals of the contract and one adopted-stamped copy of the letter to the CAO Risk Management Branch, attention Rocky A. Armfield, County Risk Manager.

Respectfully submitted,

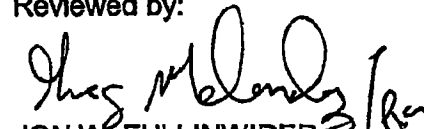
  
DAVID E. JANSSEN  
Chief Administrative Officer

DEJ:RAA  
DU:DS:sg

Attachment

c: Executive Officer, Board of Supervisors  
Chief Information Officer  
County Counsel

Reviewed by:

  
JON W. FULLINWIDER  
Chief Information Officer

## CIO ANALYSIS

**SOLE SOURCE CONTRACT WITH GENSOURCE FOR SOFTWARE MAINTENANCE AND  
APPLICATION HOSTING SERVICES FOR A WORKERS' COMPENSATION  
CLAIMS ADMINISTRATION SYSTEM**  
(All Districts – 3 Votes)

**CIO RECOMMENDATION:**    ☒ **APPROVE**                      ☐ **APPROVE WITH MODIFICATION**  
   ☐ **DISAPPROVE**

**Contract Type:**

☐ **New Contract**                      ☐ **Contract Amendment**                      ☐ **Contract Extension**  
☒ **Sole Source Contract**                      ☐ **Hardware Acquisition**                      ☐ **Other**

**New/Revised Contract Term:**    **Base Term:** Three Yrs    **# of Option Yrs:** Two 1-year terms

**Contract Components:**

☒ **Software**                      ☒ **Hardware**                      ☐ **Telecommunications**  
☒ **Professional Services**

**Project Executive Sponsor:** Alex Rossi, Chief Program Specialist, CAO Risk  
Management Branch

**Budget Information :**

Y-T-D Contract Expenditures	\$ 0
Requested Contract Amount	\$ 2,471,500
Aggregate Contract Amount	\$ 2,471,500

**Project Background:**

Yes	No	Question
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this project legislatively mandated?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this project subvented? If yes, what percentage is offset?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project/application applicable to (shared use or interfaced) other departments? If yes, name the other department(s) involved? The System is currently being used by CAO and County Counsel staff, as well as County's workers' compensation third party administrators.

**Strategic Alignment:**

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project in alignment with the County of Los Angeles Strategic Plan?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project consistent with the currently approved Department Business Automation Plan?

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does the project's technology solution comply with County of Los Angeles IT Directions Document?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does the project technology solution comply with preferred County of Los Angeles IT Standards?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	This contract and/or project and its milestone deliverables must be entered into the Information Technology Tracking System (ITTS).

**Project/Contract Description:**

This sole source contract with GenSource will allow the Chief Administrative Officer's (CAO) Risk Management Branch to upgrade its Workers' Compensation Claims Administration System (System) to the latest web-enabled version, provide expanded reporting capabilities, and provide for application hosting services, at a lower cost than ISD. The term of the contract is three years at a total cost of \$1,544,500 with an option to extend the hosting and maintenance services for two one-year terms at a cost of \$463,500 per year.

**Background:**

The System software was originally purchased using an ISD Purchase Order and has been operating out of the ISD Data Center by the Risk Management Branch since 1985 with technical support from GenSource. The System is currently used by approximately 300 users including the County's workers' compensation third-party administrators, CAO and County Counsel as part of the County's workers' compensation claims administration program. The workers' compensation claims administration program processes indemnity payments to injured workers, issues medical payments to healthcare and other service providers, and provides State mandated claims data.

An advance Board notification to file a sole source contract with GenSource was filed on February 23, 2006. The Chief Information Office and County Counsel have reviewed and approved this contract.

**Project Justification/Benefits:**

GenSource is a recognized leader in the workers' compensation information system industry and provides services to other public entities including the State of California and the County of San Bernardino. GenSource also has extensive experience and knowledge about the County's workers' compensation program and services based on their experience working with the County to maintain and operate the System over the past 20 years.

**Project Metrics:**

This is a fixed price deliverables-based contract. As such, the Statement of Work and its Payment Schedule specifies the services that will be provided.

**Impact On Service Delivery Or Department Operations, If Proposal Is Not Approved:**

The System is currently used to provide timely and accurate issuance of the County's workers' compensation benefits and payments, as well as comply with State mandated reporting requirements. Approval of the Contract will ensure continued and uninterrupted administration and processing of the County's workers' compensation benefits and payments and allows the CAO to utilize the latest supported version of the System.

**Alternatives Considered:**

The System proprietary software is developed and maintained by GenSource. Software customizations have been made to the baseline software over the years to support the County's workers' compensation program requirements. GenSource is the only vendor that can modify the latest version of the System to retrofit the County's software customizations. As such, the CAO did not consider other alternatives.

**Project Risks:**

Key project risks include ensuring that:

- GenSource provides an adequate level of service for the hosted System to support the County's workers' compensation program administration requirements; and
- County maintains ownership of all workers' compensation claims data and has access to the System software at contract expiration or termination.

**Risk Mitigation Measures:**

The following risk mitigation measures are in place to address the key project risks:

- A comprehensive Service Level Agreement (SLA) and Performance Standards Requirements (with associated penalties) are included in the Contract. GenSource is also required to provide a technical architecture that meets predefined system performance requirements.
- Specific data ownership and transition terms have been included in the Contract Statement of Work to ensure that the County owns all claims data and that GenSource is required to provide the data to the County upon contract expiration or termination. Additionally, GenSource will be required to escrow a version of the System software that includes the County's software customizations.

**Financial Analysis:**

The total cost of the Contract is \$2,471,500 as follows:

1. A cost of \$1,544,500 for a three year base contract term comprised of:
  - a. A one time charge of \$154,000 for system upgrade and to transition to the hosting environment.

- b. A maximum of \$720,000 (\$240,000 per year) for system maintenance and application hosting services.
  - c. A maximum of \$310,500 (\$103,500 per year) for State mandated electronic transfer of workers' compensation claims data.
  - d. A maximum of \$300,000 (\$100,000 per year) as contingency funding to accommodate unanticipated System software changes resulting from required software customizations or enhancements, new or revised State requirements and/or increased number of users resulting from program expansion.
  - e. A maximum of \$60,000 (\$20,000 per year) for additional training, as required by County to support program expansion.
2. A cost of \$927,000 for two optional one year terms comprised of:
- a. A maximum of \$480,000 (\$240,000 per year) for system maintenance and application hosting services.
  - b. An estimate of \$207,000 (\$103,500 per year) for State mandated electronic transfer of workers' compensation claims data.
  - c. A maximum of \$40,000 (\$20,000 per year) for additional training, as required by County to support program expansion.
  - d. A maximum of \$200,000 (\$100,000 per year) as contingency funding to accommodate unanticipated System software changes resulting from required software customizations or enhancements, new or revised State requirements and/or increased number of users resulting from program expansion.

Funding for this contract is provided by the Workers' Compensation Trust Fund.

**CIO Concerns:**

None.

**CIO Recommendations:**

My Office supports this contract and recommends approval by the Board.

**CIO APPROVAL:**

Date Received: 1/29/2007

Prepared by: Peterson

Date: 1/30/2007

Approved: [Signature]

Date: 1/30/2007

**76027**

**CHIEF ADMINISTRATIVE OFFICE**



**CONTRACT**

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES**

**AND**

**GENSOURCE CORPORATION**

**FOR**

**SOFTWARE MAINTENANCE AND**

**APPLICATION HOSTING SERVICES**



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**CONTRACT FOR  
SOFTWARE MAINTENANCE AND APPLICATION HOSTING SERVICES**

**THIS CONTRACT** (together with the preamble, recitals and Exhibits hereto, the "Contract") is made and entered into as of the Effective Date by and between the County of Los Angeles, a political subdivision of the State of California ("County") and GenSource, a division of StrataCare, Inc., a Delaware corporation ("Contractor").

**RECITALS**

**WHEREAS**, County has a license for an automated workers' compensation claims administration system (the "System") for processing of Workers' Compensation claims which was acquired pursuant to that certain County Internal Services Purchase Order No. 31082350 dated April 25, 2006 by and between County and Contractor (the "Purchase Order");

**WHEREAS**, County desires to contract for the provision of software maintenance and application hosting services (collectively, the "Services") in connection with the System;

**WHEREAS**, County has determined that the Services are of a technical nature and is unable to recruit qualified personnel with the requisite training, knowledge, or experience to perform the Services;

**WHEREAS**, this Contract is therefore authorized under California Government Code Section 31000, which authorizes the Board of Supervisors to contract for special services;

**WHEREAS**, Contractor is a private firm specializing in providing software maintenance and application hosting services and possesses the competence, expertise, and personnel necessary to provide the Services upon the terms and conditions described hereunder;

**WHEREAS**, Contractor has previously provided County with software maintenance services with respect to the System under the Purchase Order, and is willing to provide the Services to County under this Contract;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1.0 APPLICABLE DOCUMENTS**

Exhibits A, B, C, D, E, F, G, H, I and J are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to the Exhibits according to the following priority.

- EXHIBIT A - Statement of Work
- EXHIBIT B - Pricing Schedule
- EXHIBIT C - Contractor's EEO Certification
- EXHIBIT D - County's Administration
- EXHIBIT E - Contractor's Administration

- EXHIBIT F - Contractor Employee Acknowledgement, Confidentiality and Copyright Assignment Agreement
- EXHIBIT G - Jury Service Ordinance
- EXHIBIT H - Escrow Agreement
- EXHIBIT I - Safely Surrendered Baby Law
- EXHIBIT J - Contractor's Obligations as a "Business Associate" Under the Health Insurance Portability & Accountability Act of 1996 (HIPAA)

This Contract and the Exhibits hereto constitute the complete and exclusive statement of understanding between the parties, and supersedes all previous contracts, written and oral, and all communications between the parties relating to the subject matter of this Contract. No change to this Contract shall be valid unless prepared pursuant to Section 8.4 (Change Notices and Amendments) and signed by both parties.

## **2.0 DEFINITIONS**

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 Acceptance: "Acceptance" shall mean County's written approval of any tasks, subtasks, deliverables, goods, services or other work provided by Contractor to County, consistent with the requirements of *Exhibit A - Statement of Work*.
- 2.2 Contract: "Contract" shall have the meaning set forth in the preamble.
- 2.3 Contractor: "Contractor" shall have the meaning set forth in the preamble.
- 2.4 Contractor's Project Manager: "Contractor's Project Manager" shall have the meaning specified in Section 7.1 (Contractor's Project Manager).
- 2.5 County's Contract Administrator: "County's Contract Administrator" shall have the meaning specified in Section 6.1 (County Contract Administrator).
- 2.6 County's Project Director: "County's Project Director" shall have the meaning specified in Section 6.2 (County Project Director).
- 2.7 County's Project Manager: "County's Project Manager" shall have the meaning specified in Section 6.3 (County Project Manager).
- 2.8 Day(s): "Day(s)" shall mean calendar day(s) unless otherwise specified.
- 2.9 Deficiency(ies): "Deficiency(ies)" shall mean and include defect(s) in design, development, programming, implementation, materials, or workmanship; error(s); omission(s); deviation(s) from published or mutually agreed upon standards, from any of the Specifications, or from any County-approved Deliverables; or other problem(s) which result in the System not performing in accordance with the provisions of this Contract, including, without limitation, the Specifications.
- 2.10 Department Head: "Department Head" shall mean the Chief Administrative Officer of the County of Los Angeles.

CONTRACT FOR SOFTWARE MAINTENANCE AND APPLICATION HOSTING SERVICES

- 2.11 Deliverable(s): "Deliverable(s)" shall mean any task, subtask, item, and/or a service or other consideration to be provided by Contractor under this Contract.
- 2.12 Effective Date: "Effective Date" shall mean March 1, 2007 or the date the Contract is executed by the County of Los Angeles Board of Supervisors, whichever is later.
- 2.13 Fiscal Year: "Fiscal Year" shall mean the twelve (12) month period beginning July 1st and ending the following June 30th.
- 2.14 Source Code: "Source Code" shall have the meaning set forth in Subsection 3.15 of *Exhibit A - Statement of Work*.
- 2.15 Specifications: "Specifications" shall mean the functional application program specifications set forth in *Exhibit A - Statement of Work*.
- 2.16 System: "System" shall mean all Software, Hardware, third party software, conversion, Interfaces, databases and services described in this Contract and as otherwise agreed to in writing by Contractor and County pursuant to Section 8.4 (Change Notices and Amendments) collectively comprising the Workers' Compensation Claims Administration System. Reference to the System may include one or more components or modules thereof or the entire System.
- 2.17 User: "User" shall mean any person or entity authorized by County to access or use the System or a System component.
- 2.18 Weekday Minimum Maintenance Period: The "Weekday Minimum Maintenance Period" shall mean the period between the hours of 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding the following holidays observed by Contractor: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, Christmas Day, and Day after Christmas.

**3.0 WORK**

- 3.1 Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time, all tasks, deliverables, goods, services and other work as set forth in *Exhibit A - Statement of Work*.
- 3.2 If the Contractor provides any tasks, deliverables, goods, services, or other work, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

**4.0 TERM OF CONTRACT**

- 4.1 The term of this Contract shall commence on the Effective Date and shall expire three (3) years thereafter, unless sooner terminated or extended, in whole or in part, as provided in this Contract.
- 4.2 The County shall have the sole option to extend the Contract term for up to two (2) additional one-year periods, for a maximum total Contract term of five (5) years. Each such option to extend shall be exercised at the sole discretion of the Chief Administrative

Officer ("CAO") or his or her designee, subject to Section 8.4 (Change Notices And Amendments) of this Contract.

- 4.3 Contractor shall notify the County when this Contract is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, Contractor shall send written notification to the County at the address provided in *Exhibit D - County's Administration*.

**5.0 CONTRACT SUM**

- 5.1 The maximum Contract sum under the terms of this Contract shall be the total monetary amount payable by County to Contractor for provision of the Services specified herein in accordance with *Exhibit B - Pricing Schedule*, of this Contract. For the first year of the term of the Contract, the maximum Contract sum shall be Six Hundred Seventeen Thousand Five Hundred Dollars (\$617,500). For subsequent years during the term of the Contract, the Contract sum shall be as set forth in *Exhibit B - Pricing Schedule*, of this Contract.
- 5.2 The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein.
- 5.3 Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than the Contractor or its affiliates, whether through assignment, subcontract, delegation, or any other mechanism (but excluding a merger or sale of all or substantially all of Contractor's assets), with or without consideration for any reason whatsoever, shall occur only with the County's express prior written approval.
- 5.4 Contractor shall maintain a system of record keeping that will allow Contractor to determine when it has incurred seventy-five percent (75%) of the total Contract authorization under this Contract. Upon occurrence of this event, Contractor shall send written notification to the County at the address herein provided in *Exhibit D - County's Administration*.
- 5.5 Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Contract. Should Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such payment from Contractor. This provision shall survive the expiration or other termination of this Contract.
- 5.6 Invoices and Payments:
- 5.6.1 Contractor shall invoice County only for providing the tasks, deliverables, goods, services, and other work specified in *Exhibit A - Statement of Work* and elsewhere hereunder. Contractor shall prepare invoices, which shall include the charges owed to Contractor by County under the terms of this Contract. Contractor's payments shall be as provided in *Exhibit B - Pricing Schedule*, and Contractor shall be paid only for the tasks, deliverables, goods, services, and other work approved

CONTRACT FOR SOFTWARE MAINTENANCE AND APPLICATION HOSTING SERVICES

in writing by County. If County does not approve work in writing, no work will be performed and no payment shall be due to Contractor for that work.

- 5.6.2 Contractor's invoices shall be priced in accordance with *Exhibit B - Pricing Schedule*.
- 5.6.3 Contractor's invoices shall contain the information set forth in *Exhibit A - Statement of Work* describing the tasks, deliverables, goods, services, work hours, and facility and/or other work for which payment is claimed.
- 5.6.4 Contractor shall submit the monthly invoices to County by the fifteenth (15<sup>th</sup>) calendar day of the month following the month of service.
- 5.6.5 All invoices under this Contract shall be submitted to the County's Project Director and the County's Project Manager.
- 5.6.6 All invoices submitted by Contractor for payment must have the written approval of County's Project Director prior to any payment thereof. In no event shall County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld, and in no instance will such approval take more than thirty (30) days from receipt of properly prepared invoices by County.
- 5.6.7 If this Contract is terminated by County for default pursuant to Section 8.43 (Termination for Default), then, without excusing such default, and without prejudice to any other rights of County in this Contract or as provided by law, Contractor shall be entitled to receive payment for all work performed prior to the termination date and approved by County.
- 5.6.8 If termination by County for default is a result of failure by Contractor to achieve Deliverables as thereafter determined by County, as set forth in *Exhibit A - Statement of Work*, and such failure is not caused by an unreasonable delay or unreasonable lack of cooperation by County, then County shall be obligated to Contractor for the sums related to work performed and approved by County. The County's license to use the System shall remain in effect following the termination of this Contract.
- 5.7 Notwithstanding any other provision of this Contract, and in addition to the provisions of Section 5.6 (Invoices and Payments) and Attachment I (Performance Standards and Service Level Agreement) of *Exhibit A - Statement of Work*, and to any rights of County given by law or provided in this Contract, County may upon written notice to Contractor withhold payment for any Deliverable or other services while Contractor is in default hereunder, or at any time that Contractor has not provided a County-approved Deliverable which, under the approved Implementation Package as described within Section 3.12 of the Statement of Work, is identified as dependent on and is scheduled to be delivered prior to or concurrently with the Deliverables. This provision shall not be deemed to impair any claims that Contractor may have against County or Contractor's rights to assert such claims pursuant to Section 8.17 (Dispute Resolution Procedure), provided that such default or non-delivery is not caused by an unreasonable delay or unreasonable lack of cooperation by County.



**6.0 ADMINISTRATION OF CONTRACT - COUNTY**

A listing of all County Administration referenced herein is shown in *Exhibit D - County's Administration*. County shall notify Contractor in writing of any change in the names or addresses shown.

**6.1 County's Contract Administrator:** Responsibilities of the County's Contract Administrator shall include:

- 6.1.1 Making changes in the terms and conditions of this Contract in accordance with Section 8.4 (Change Notices and Amendments); and
- 6.1.2 Providing direction to Contractor in the areas relating to County policy, information requirements, and procedural requirements.

**6.2 County's Project Director:** Responsibilities of the County's Project Director shall include:

- 6.2.1 Authorizing and approving any and all Work Orders and invoices and ensuring that all required components are delivered by Contractor;
- 6.2.2 Providing direction to Contractor on all business assessment needs; and
- 6.2.3 Ensuring that the objectives of this Contract are met.

The County's Project Director is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever.

**6.3 County's Project Manager:** Responsibilities of the County's Project Manager shall include:

- 6.3.1 Overseeing the day-to-day administration of this Contract;
- 6.3.2 Meeting with Contractor's Project Manager on a regular basis;
- 6.3.3 Inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of Contractor.

The County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever.

**7.0 ADMINISTRATION OF CONTRACT - CONTRACTOR**

**7.1 Contractor's Project Manager**

- 7.1.1 Contractor's Project Manager is designated in *Exhibit E - Contractor's Administration*. Contractor shall notify County in writing (which may be in the form of email) of any change in the name or address of Contractor's Project Manager.

- 7.1.2 Contractor's Project Manager shall be responsible for Contractor's day-to-day activities as related to this Contract and shall coordinate with County's Project Manager on a regular basis.

**7.2 Background and Security Investigations**

- 7.2.1 Contractor staff performing work under this Contract shall undergo and pass Contractor's background investigation, as a condition of beginning and continuing to work under this Contract. The fees associated with obtaining the background information shall be at the expense of Contractor, regardless if Contractor's staff passes or fails the background clearance investigation. No person employed by the Contractor and assigned to the County shall have a high-grade misdemeanor and/or misdemeanor theft conviction or any felony convictions. Contractor shall be under a continuing obligation to disclose any subsequent criminal record information to the County and to remove an employee who in future incurs such record from performing work under this Agreement at County's request.
- 7.2.2 County retains the right to conduct its own background investigation of Contractor staff performing work under this Agreement at County's sole cost. County will not provide to Contractor or to Contractor's staff any information obtained through any County conducted background clearance.
- 7.2.3 Removal of any Contractor staff pursuant to this Section 7.2 shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.

**7.3 Confidentiality**

Each party shall maintain the confidentiality of all records obtained from the other party under this Contract in material compliance with all applicable federal, State or local laws, ordinances, regulations and directives relating to confidentiality. Each party shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract. Contractor shall cause each employee performing services covered by this Contract to sign and adhere to *Exhibit F - Contractor Acknowledgment and Confidentiality Agreement*).

**8.0 STANDARD TERMS AND CONDITIONS**

**8.1 ASSIGNMENT AND DELEGATION**

- 8.1.1 The Contractor shall not assign its rights or delegate its duties under this Contract, or both, either in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. Notwithstanding the foregoing, a merger by Contractor with or the sale of all or substantially all of Contractor's assets to a third party shall not constitute an assignment, provided that the third party agrees in writing that it shall be bound by all of the terms and conditions of this Contract (a "Permitted Transfer"). For purposes of this Section 8.1, County consent shall require a written amendment to the Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Contract shall be deductible, at the County's sole discretion, against the claims, which the Contractor may have against the County.

8.1.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interests they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Contract, except that this provision shall not apply to a Permitted Transfer.

8.1.3 If any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without the County's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract, except that this provision shall not apply to a Permitted Transfer. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

## **8.2 AUTHORIZATION WARRANTY**

Each party represents and warrants that the person executing this Contract on its behalf is an authorized agent who has actual authority to bind such party to each and every term, condition, and obligation of this Contract and that all requirements of such party have been fulfilled to provide such actual authority.

## **8.3 BUDGET REDUCTIONS**

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County Contracts, the County reserves the right to reduce its payment obligation correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the services to be provided by the Contractor under the Contract shall also be reduced correspondingly. The County's notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. The Contractor shall have thirty (30) calendar days after receipt of such notice within which to terminate this Contract and receive payment for all work performed by Contractor and approved by County prior to the termination date. If Contractor does not exercise its right to terminate this Contract, Contractor shall continue to provide all of the services set forth in the Contract.

## **8.4 CHANGE NOTICES AND AMENDMENTS**

8.4.1 The County reserves the right to initiate Change Notices that do not materially affect the scope, term, Contract Sum or payments. All such changes must be approved in advance by the parties and shall be accomplished with an executed Change Notice signed by the Contractor and by the County's Contract Administrator.

8.4.2 For any change which materially affects the scope of work, term, Contract Sum, payments, or any term or condition included under this Contract, a negotiated written Amendment to this Contract shall be prepared and approved by the County's Board of Supervisors and executed by an authorized representative of County and Contractor.

8.4.3 The County's Board of Supervisors or CAO, or designee, may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County shall notify Contractor of such proposed addition and/or change. If such modifications or related changes are accepted by Contractor, an Amendment to the Contract shall be prepared and executed by the Contractor and by the CAO, or designee.

## **8.5 COMPLAINTS**

The Contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints about the System and/or the services to be provided pursuant to this Contract.

8.5.1 Within ten (10) business days after Contract Effective Date, the Contractor shall provide the County with the Contractor's policy for receiving, investigating and responding to user complaints.

8.5.2 The County will review the Contractor's policy and provide the Contractor with approval of said plan or with requested changes.

8.5.3 If the County requests changes in the Contractor's policy, the Contractor shall make such changes and resubmit the plan within five (5) business days.

8.5.4 If, at any time, the Contractor wishes to change the Contractor's policy, the Contractor shall submit proposed changes to the County for approval before implementation.

8.5.5 The Contractor shall preliminarily investigate all complaints and notify the County's Project Manager and County's Project Director of the status of the investigation within five (5) business days of receiving the complaint.

8.5.6 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.

8.5.7 Copies of all written responses shall be sent to the County's Project Manager and County's Project Director within three (3) business days of mailing to the complainant.

## **8.6 COMPLIANCE WITH APPLICABLE LAW**

8.6.1 The Contractor shall comply in all material respects with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.

8.6.2 The Contractor shall indemnify and hold harmless the County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, arising from or related to any material violation on the part of the Contractor or its employees, agents, or subcontractors of any such laws, rules, regulations, ordinances, or directives.

## **8.7 COMPLIANCE WITH CIVIL RIGHTS LAWS**

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Contractor shall comply with *Exhibit C - Contractor's EEO Certification*.

## **8.8 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM**

### **8.8.1 Jury Service Program:**

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as *Exhibit G* and incorporated by reference into and made a part of this Contract.

### **8.8.2 Written Employee Jury Service Policy:**

1. Unless Contractor has demonstrated to the County's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.
2. For purposes of this Section, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If

Contractor uses any subcontractor to perform services for the County under the Contract, the subcontractor shall also be subject to the provisions of this Subsection. The provisions of this Subsection shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

3. If Contractor is not required to comply with the Jury Service Program when the Contract commences, Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Jury Service Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that Contractor demonstrate to the County's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.
4. Contractor's violation of this Subsection of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

## **8.9 CONFLICT OF INTEREST**

- 8.9.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.
- 8.9.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that are reasonably expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this Subsection shall be a material breach of this Contract.

**8.10 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST**

Should the Contractor require additional or replacement personnel after the Effective Date of this Contract to perform the services set forth herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

**8.11 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS**

8.11.1 Should the Contractor require additional or replacement personnel after the Effective Date of this Contract, the Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the Contractor will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Contractor.

8.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

**8.12 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

**8.12.1 Responsible Contractor:**

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Contractors.

**8.12.2 Chapter 2.202 of the County Code:**

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the Contractor may have with the County, provided that the County shall make all payments for work performed and approved by County prior to the termination date.

**8.12.3 Non-responsible Contractor:**

The County may debar a Contractor if the Board of Supervisors finds, in its reasonable discretion, that the Contractor has done any of the following: (1) violated a material term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects

on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

**8.12.4 Contractor Hearing Board:**

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will



provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board

#### 8.12.5 Subcontractors of Contractor:

These terms shall also apply to subcontractors of County Contractors.

#### **8.13 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at [www.babysafela.org](http://www.babysafela.org).

#### **8.14 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

8.14.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through Contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

8.14.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**8.15 COUNTY'S QUALITY ASSURANCE PLAN**

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract, provided that the County shall make all payments for work performed by Contractor and approved by County prior to the termination date.

**8.16 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS**

8.16.1 Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor or employees or agents of Contractor. Such repairs shall be made immediately after Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

8.16.2 If Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by Contractor by cash payment upon demand.

**8.17 DISPUTE RESOLUTION PROCEDURE**

8.17.1 Contractor and County agree to act promptly and diligently to mutually resolve any disputes which may arise with respect to this Contract. All such disputes shall be subject to the provisions of this Section 8.17.

8.17.2 Contractor and County agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which County, in its sole discretion, determines should be delayed as a result of such dispute or if Contractor has a reasonable basis for not performing. County shall continue to pay sums not in dispute during any such period of continued performance.

8.17.3 If Contractor fails (without a reasonable basis) to continue without delay its performance hereunder which County, in its sole discretion, determines should not be delayed as a result of such dispute, then any additional costs which may be incurred by Contractor or County as a result of Contractor's failure to continue to so perform shall be borne by Contractor, and Contractor shall make no claim whatsoever against County for such costs. Contractor shall promptly reimburse County for such County costs, as determined by County, or County may deduct all such additional costs from any amounts due to Contractor from County, whether under this Contract or otherwise.

8.17.4 If County fails to continue without delay to perform its responsibilities under this Contract which County, in its sole discretion, determines should not be delayed as a result of such dispute, then any additional costs incurred by the Contractor or County as a result of County's failure to continue to so perform shall be borne by

County, and County shall make no claim whatsoever against Contractor for such costs. County shall promptly reimburse Contractor for all such additional Contractor costs subject to the written approval of such costs by County.

- 8.17.5 In the event of any dispute between the parties with respect to this Contract, Contractor and County shall submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.
- 8.17.6 In the event that the Project Managers are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to the parties' respective Contract Administrators for further consideration and discussion to attempt to resolve the dispute.
- 8.17.7 In the event that the Contract Administrators are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall immediately be submitted to Contractor's President and County's Assistant Administrative Officer for further consideration and discussion to attempt to resolve the dispute.
- 8.17.8 In the event that the Contractor's President and County's Assistant Administrative Officer are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then each party may assert its other rights and remedies as provided by law.
- 8.17.9 All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all levels described in this Section 8.17, the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face-to-face meeting or by telephone, or in writing by exchange of correspondence.
- 8.17.10 Notwithstanding any other provision of the Contract, County's right to terminate this Contract pursuant to Section 8.42 (Termination for Convenience), Section 8.43 (Termination for Default), Section 8.45 (Termination for Insolvency), or any other termination provision hereunder, and County's right to seek injunctive relief to enforce the provisions of Section 7.4 (Confidentiality), Section 9.4 (Proprietary Considerations) and Section 9.8 (Confidentiality of County Records), shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of County's rights, and shall not be deemed to impair any claims that Contractor may have against County or Contractor's rights to assert such claims after any such termination or such injunctive relief has been obtained.

#### **8.18 EMPLOYMENT ELIGIBILITY VERIFICATION**

- 8.18.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by

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Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

8.18.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

**8.19 FACSIMILE REPRESENTATIONS**

The County and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party (or other representations by electronic means such as email), when appearing in appropriate places on the Change Notices and Amendments prepared pursuant to Section 8.4, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices and Amendments to this Contract, such that the parties need not follow up facsimile (or other electronic) transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

**8.20 FAIR LABOR STANDARDS**

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

**8.21 GOVERNING LAW, JURISDICTION, AND VENUE**

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

**8.22 INDEPENDENT CONTRACTOR STATUS**

8.22.1 This Contract is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.22.2 Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

8.22.3 Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.

8.22.4 Contractor shall adhere to the provisions stated in Section 7.4 (Confidentiality).

## **8.23 INDEMNIFICATION**

Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Contractor's acts and/or omissions arising from and/or relating to this Contract. Contractor shall not be obligated to indemnify for County's sole negligence.

## **8.24 GENERAL INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the County and during the term of this Contract, the Contractor shall provide and maintain, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Contract. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the County. Such coverage shall be provided and maintained at the Contractor's own expense.

**8.24.1 Evidence of Insurance:** Certificate(s) or other evidence of coverage satisfactory to the County shall be delivered to the County Project Manager prior to commencing services under this Contract. Such certificates or other evidence shall:

- Specifically identify this Contract;
- Clearly evidence all coverages required in this Contract;
- Contain the express condition that the County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance;
- Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from this Contract; and
- Identify any deductibles or self-insured retentions for the County's approval. The County retains the right to require the Contractor to reduce or eliminate such deductibles or self-insured retentions as they apply to the County, or,

require the Contractor to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

**8.24.2 Insurer Financial Ratings:** Insurance is to be provided by an insurance company reasonably acceptable to the County with an A.M. Best rating of not less than A:VII unless otherwise approved by the County.

**8.24.3 Failure to Maintain Coverage:** Failure by the Contractor to maintain the required insurance, or to provide evidence of insurance coverage acceptable to the County, shall constitute a material breach of the Contract upon which the County may immediately terminate or suspend this Contract. The County, at its sole option, may obtain damages from the Contractor resulting from said breach. Alternatively, the County may purchase such required insurance coverage, and with notice to the Contractor, the County may deduct from sums due to the Contractor any premium costs advanced by the County for such insurance.

**8.24.4 Notification of Incidents, Claims or Suits:** Contractor shall report to the County:

- Any accident or incident relating to services performed under this Contract which involves injury or property damage which may result in the filing of a claim or lawsuit against the Contractor and/or the County. Such report shall be made in writing within 24 hours of occurrence.
- Any third party claim or lawsuit filed against the Contractor arising from or related to services performed by the Contractor under this Contract.
- Any injury to a Contractor employee that occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County Contract Manager.
- Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to the Contractor under the terms of this Contract.

**8.24.5 Compensation for County Costs:** In the event that the Contractor fails to comply with any of the indemnification or insurance requirements of this Contract, and such failure to comply results in any costs to the County, the Contractor shall pay full compensation for all costs incurred by the County.

**8.24.6 Insurance Coverage Requirements for Subcontractors:** The Contractor shall ensure any and all subcontractors performing services under this Contract meet the insurance requirements of this Contract by either:

- The Contractor providing evidence of insurance covering the activities of subcontractors, or
- The Contractor providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. The County retains the right to obtain copies of evidence of subcontractor insurance coverage at any time.

## **8.25 INSURANCE COVERAGE REQUIREMENTS**

**8.25.1 General Liability** insurance written on ISO policy form CG 00 01 or its equivalent with limits of not less than the following. County will accept Contractor use of excess liability coverage to satisfy the required limits.

General Aggregate:	\$4million
Products/Completed Operations Aggregate:	\$4million
Personal and Advertising Injury:	\$2million
Each Occurrence:	\$2million

**8.25.2 Automobile Liability** written on ISO policy form CA 00 01 or its equivalent with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

**8.25.3 Workers' Compensation and Employers' Liability** insurance providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which the Contractor is responsible. If the Contractor's employees will be engaged in maritime employment, coverage shall provide workers' compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which the Contractor is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

**8.25.4 Professional Liability:** Insurance covering liability arising from any error, omission, negligent or wrongful act of the Contractor, its officers or employees with limits of not less than \$2 million per occurrence. Such insurance shall include coverage for any actual or alleged infringement of any patent, copyright or other rights of any third party, or any actual or alleged trade secret disclosure or misappropriation. The coverage also shall provide an extended two (2) year reporting period commencing upon termination or cancellation of this Contract.

**8.25.5 Crime Coverage:** Insurance with limits in amounts not less than indicated below covering against loss of money, securities, or other property referred to in this Contract, and naming the County as loss payee.

Employee Dishonesty:	\$500,000
Computer Fraud:	\$500,000

## **8.26 NONDISCRIMINATION AND AFFIRMATIVE ACTION**

**8.26.1** The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or

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mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

8.26.2 The Contractor shall certify to, and comply with, the provisions of *Exhibit C - Contractor's EEO Certification*.

8.26.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

8.26.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental disability, marital status, or political affiliation.

8.26.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

8.26.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this Section 8.28 when so requested by the County.

8.26.7 If the County finds that any provisions of this Section 8.28 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Contract.

8.26.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

**8.27 NON EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Contractor. This Contract shall not restrict the CAO from acquiring similar, equal or like goods and/or services from other entities or sources.



**8.28 NOTICE OF DELAYS**

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) day, give notice thereof, including all relevant information with respect thereto, to the other party.

**8.29 NOTICE OF DISPUTES**

The Contractor shall bring to the attention of the County Project Manager, County Project Director and/or County Contract Administrator any dispute between the County and the Contractor regarding the performance of services as stated in this Contract. If the County Project Manager, County Project Director or County Contract Administrator is not able to resolve the dispute, the CAO, or designee, shall resolve it.

**8.30 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

**8.31 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in *Exhibit I* of this Contract and is also available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

**8.32 NOTICES**

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in *Exhibit D - County's Administration* and *Exhibit E - Contractor's Administration*. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Department Head or his /her designee shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

**8.33 PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, the Contractor and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

**8.34 PUBLIC RECORDS ACT**

8.34.1 Any documents submitted by Contractor; all information obtained in connection with the County's right to audit and inspect Contractor's documents, books, and

accounting records pursuant to Section 8.38 (Record Retention and Inspection/Audit Settlement), of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary": The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction, provided that the County will endeavor to provide Contractor with prompt notice of any such required disclosure so that Contractor may seek to prevent or limit the scope of such disclosure.

- 8.34.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

### **8.35 PUBLICITY**

- 8.35.1 The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself and expand its business opportunities, the County shall not inhibit the Contractor from disclosing this Contract under customary confidentiality arrangements to its prospective business partners or otherwise publishing its role under this Contract within the following conditions:

- The Contractor shall develop all publicity or other disclosure material in a professional manner; and
- During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County's Contract Administrator. The County shall not unreasonably withhold written consent.

- 8.35.2 The Contractor may, without the prior written consent of County, indicate in its proposals to customers and business partners and in its sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Section 8.37 shall apply.

### **8.36 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT**

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Contractor agrees that, upon reasonable prior notice to Contractor and no more than once per calendar year, the

County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Contract during regular business hours. All such material, including, but not limited to, all financial records, timecards and other employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in either Los Angeles or Orange County, and if any such material is located outside Los Angeles County, the Contractor shall deliver such materials to the County at a location in Los Angeles County.

8.36.1 In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. The County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

8.36.2 Failure on the part of the Contractor to comply with any of the provisions of this Section 8.38 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

8.36.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County may conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

#### **8.37 RECYCLED BOND PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

#### **8.38 SUBCONTRACTING**

8.38.1 The requirements of this Contract may not be subcontracted by the Contractor without the advance approval of the County. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Contract.

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- 8.38.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:
- A description of the work to be performed by the subcontractor;
  - A draft copy of the proposed subcontract; and
  - Other pertinent information and/or certifications requested by the County.
- 8.38.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were Contractor employees.
- 8.38.4 The Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.
- 8.38.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. The Contractor is responsible to notify its subcontractors of this County right.
- 8.38.6 The County's Contract Administrator is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees.
- 8.38.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 8.38.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to the County Contract Administrator before any subcontractor employee may perform any work hereunder.

**8.39 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of the Contractor to maintain compliance with the requirements set forth in Section 8.14 (Contractor's Warranty of Adherence to County's Child Support Compliance Program), shall constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within 90 calendar days of within notice shall be grounds upon which County may terminate this Contract pursuant to Section 8.41 (Termination for Default), and pursue debarment of Contractor, pursuant to County Code Chapter 2.202.

**8.40 TERMINATION FOR CONVENIENCE**

- 8.40.1 Following the third anniversary of the Effective Date, this Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon which such

termination becomes effective. The date upon which such termination becomes effective shall be no less than ninety (90) days after the notice is sent.

8.40.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Contract on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.40.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Contract shall be maintained by the Contractor in accordance with Section 8.38 (Record Retention & Inspection/Audit Settlement).

#### **8.41 TERMINATION FOR DEFAULT**

8.41.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the reasonable judgment of County's Contract Administrator:

- Contractor has materially breached this Contract;
- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required under this Contract; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within 15 (fifteen) days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.41.2 In the event that this Contract is terminated in whole or in part as provided in Subsection 8.41.1, (i) the County shall pay Contractor for all work performed and approved by County prior to the termination date, and (ii) if the County has terminated the Contract, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Subsection.

8.41.3 Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in Subsection 8.41.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the

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Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this Subsection 8.41.3, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

8.41.4 If, after the County has given notice of termination under the provisions of this Section 8.41, it is determined by the County that the Contractor was not in default under the provisions of this Section 8.41, or that the default was excusable under the provisions of Subsection 8.41.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8.40 (Termination for Convenience).

8.41.5 In the event the County terminates this Contract in its entirety due to the Contractor's default as provided in Subsection 8.41.1, the Contractor and the County agree that the County will have actual damages, which are extremely difficult to calculate and impracticable to fix and which will include, but are not limited to, the County's costs of procurement of replacement services and costs incurred due to delays in procuring such services. Therefore, the Contractor and the County agree that the County shall, at its sole option and in lieu of the provisions of Subsection 8.41.2, be entitled to liquidated damages from the Contractor, pursuant to California Civil Code Section 1671, in the amount of Five Thousand Dollars (\$5,000) or five percent (5%) of the applicable year's Contract sum, whichever is less, as equitable compensation to the County for such actual damages. This amount of liquidated damages shall be either paid by the Contractor to the County by cash payment upon demand or, at the sole discretion of the CAO, or designee, deducted from any amounts due to the Contractor by the County, whether under this Contract or otherwise. These liquidated damages shall be in addition to any credits, which the County is otherwise entitled to under this Contract, and the Contractor's payment of these liquidated damages shall not in any way change, or affect the provisions of Section 8.23 - Indemnification

8.41.6 The rights and remedies of the parties provided in this Section 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.41.7 Contractor may, by written notice to County, terminate the whole or any part of this Contract, if County has materially breached this Contract and has not cured such material breach within sixty (60) days of receiving notice of such breach.

**8.42 TERMINATION FOR IMPROPER CONSIDERATION**

8.42.1 County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to Contractor's performance pursuant to this Contract. In the event of such

termination, County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by Contractor.

8.42.2 Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

8.42.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

#### **8.43 TERMINATION FOR INSOLVENCY**

8.43.1 County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for Contractor; or
- The execution by Contractor of a general assignment for the benefit of creditors.

8.43.2 The rights and remedies of County provided in this Section 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **8.44 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by Contractor, shall fully comply with County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of Contractor or any County Lobbyist or County Lobbying firm retained by Contractor to fully comply with County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which County may in its sole discretion, immediately terminate or suspend this Contract.

#### **8.45 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Contract, County shall not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in County's Budget for each such future fiscal year, provided that Contractor shall have the right to stop its performance hereunder as of the first day of a fiscal year, without any liability whatsoever to the County, until funds for this Contract are appropriated for such fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for

which funds were appropriated. County shall notify Contractor in writing of any such non-allocation of funds at the earliest possible date.

**8.46 VALIDITY**

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

**8.47 WAIVER**

No waiver by either party of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of a party to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this Section 8.47 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**8.48 WARRANTY AGAINST CONTINGENT FEES**

8.48.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

8.48.2 For breach of this warranty, County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**9.0 UNIQUE TERMS AND CONDITIONS**

**9.1 OWNERSHIP OF COUNTY DATA**

9.1.1 County shall be the sole owner of all right, title and interest, including copyright, in and to all of County's data on the System.

9.1.2 County will use reasonable means to ensure that Contractor's proprietary and/or confidential items are safeguarded and held in confidence. County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of Contractor.

9.1.3 All the rights and obligations of this Subsection 9.1 shall survive the expiration or termination of this Contract.



## **9.2 OWNERSHIP OF THE SYSTEM AND LICENSE**

Contractor will retain all right, title and interest, including copyright, in and to the Source Code and all intellectual property embodied in and associated with the System modules, and the County shall have a perpetual license to use the System.

Contractor hereby grants to County a non-exclusive, perpetual, world-wide license to copy, disclose, maintain and, for up to three hundred (300) concurrent and up to six hundred thirty one (631) remote Users, use the System, and any other tools, procedures or know-how that become inextricably embodied in the System. Contractor hereby grants an option to County, exercisable at County's sole and absolute discretion, to purchase from Contractor additional concurrent User licenses and additional remote User licenses, at the prices set forth in *Exhibit B - Pricing Schedule*.

### **9.2.1 Escrow**

The Contractor shall enter into its customary agreement (the "Escrow Agreement") with an outside third party to escrow the Source Code, programming information and Documentation for the Application Software modules version licensed by the County (including all modules, database tables and definitions, files, customizations, data conversion programs and interfaces) and any and all Updates or version changes provided to the County at the inception of this Contract and thereafter. The County shall pay all the costs associated with such escrow arrangement, including, without limitation, the fees of the escrow agent. At the conclusion of the development, programming, construction and customization of the County's Application Software modules, the customized version will replace the Source Code in escrow, and the Escrow Agreement shall be amended to reflect the County's customized Application Software modules and the revised escrow arrangements. Contractor shall, on a yearly basis, at the County's cost, arrange for an independent audit of this escrow to confirm the availability and completeness of the information and that the most current version of the System is in escrow.

## **9.3 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION**

9.3.1 The Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, as such are incurred, for or by reason of any actual or alleged infringement of any patent or copyright, or other rights of any third party, or any actual or alleged trade secret disclosure or misappropriation, arising from or related to the System or the operation and utilization of Contractor's work under this Contract (hereinafter collectively referred to as "Infringement Claim(s)"). Contractor shall have no obligation to County under this Section 9.3 if any Infringement Claim is caused by use by County of the System other than in accordance with the Specifications and other applicable Documentation, as initially determined by County's Contract Administrator but subject to Section 8.17 (Dispute Resolution Procedure). Any legal defense pursuant to Contractor's indemnification obligations under this Section 9.3 shall be conducted by Contractor and performed by counsel selected by Contractor. Notwithstanding the preceding sentence, County shall have the

right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as required by law and this Contract, County shall be entitled to reimbursement for all such costs and expenses.

9.3.2 Without limiting the foregoing, in the event County's Contract Administrator becomes aware that ongoing use of the System, or any part thereof, is the subject of any Infringement Claim that might preclude or impair County's use of the System or any portion thereof (e.g. injunctive relief), or that County's continued use of the System or a portion thereof may subject it to punitive damages or statutory penalties or other costs or expenses, County shall give written notice to Contractor of such fact(s). Upon notice of such facts, Contractor shall, at no cost to County, either (1) procure the right, by license or otherwise, for County to continue to use the System or affected part(s) thereof to the same extent of County's license under this Contract, or (2) to the extent Contractor is unable to procure such right, replace or modify the System or the affected part(s) with another part or component of equivalent quality and performance capabilities, in County's determination, to become non-infringing, non-misappropriating and/or non-disclosing.

9.3.3 If Contractor fails to complete the remedial acts set forth above within ninety (90) days after the date of the written notice from County, County shall have the right to take such remedial acts it determines to be reasonable to mitigate any impairment of its use of the System or the affected part(s) thereof or damages or other costs or expenses (hereafter referred to as "County's Remedial Acts"). Contractor shall indemnify County for all amounts paid and all direct and indirect costs associated with County's Remedial Acts. Failure by Contractor to pay such amounts and costs within ten (10) days after receiving an invoice from County shall, in addition to, and cumulative to all other remedies entitle County to immediately withhold payments due to Contractor up to the total of the amounts and costs paid in connection with County's Remedial Acts.

#### **9.4 LIMITED WARRANTY - DISCLAIMER AND LIMITATION OF LIABILITY**

9.4.1 **Limited Warranty.** Should the System fail to meet its Specifications, County shall notify Contractor in writing no later than 30 days after initial installation. Notwithstanding anything to the contrary in this Contract, Contractor's entire liability and County's exclusive remedy in such an event shall be the refund of all license fees paid to date, or the sum of \$20,000, whichever amount shall be greater. Except for the foregoing, the System is provided "as is," without additional warranty of any kind, and Contractor expressly disclaims all other warranties, express or, including, but not limited to, the implied warranties of design, merchantability, fitness for a particular purpose, any warranties arising from a course of dealing, usage, or trade practice. Contractor does not warrant that the functions contained in the System will meet County's requirements, or that the operation of the System will be uninterrupted or error-free, or that defects in the System will be corrected. Furthermore, Contractor does not warrant or make any representations regarding the use or the results of the use of the System in terms of its correctness, accuracy, reliability, or otherwise. No oral or written information or advice given by Contractor or Contractor's representatives shall create any warranty with regard to the System or in any way increase the scope of this warranty.

9.4.2 **Limitation of Liability.** Under no circumstances, including negligence, shall Contractor be liable for any lost revenue or profits or any incidental, indirect, special, or consequential damages that result from the use or inability to use the System, even if Contractor or Contractor's authorized representative has been advised of the possibility of such damages. In no event shall Contractor's total liability to County for all damages, losses, and causes of action, whether in Contract, tort (including negligence) or otherwise, exceed a sum equal to ninety (90) days service fees paid by County to Contractor under this Contract. In addition, Contractor will not be liable for any claims of any party arising out of any alleged or actual infringement by the System of any intellectual property rights of any third party. This limitation of liability provision, however, shall not relieve Contractor's indemnification obligations to third parties pursuant to Section 8.23 (Indemnification), of this Contract nor shall it apply to any loss or related expense which is actually covered under any of the commercial insurance policies required to be maintained by Contractor pursuant to this Contract.

9.4.3 **Limitations Concerning Third Party Material.** Contractor shall have no responsibility under any condition for performance of any hardware or programs licensed by it from third parties, and County shall rely solely on the manufacturers' warranty (if any).

9.4.4 **Exclusions.** Contractor shall not be responsible to the extent any failure to perform in accordance with the foregoing warranties is caused by (a) County's failure to use the System in accordance with instructions included in the Documentation provided to County by Contractor, (b) the modification of the System by any person other than Contractor, its employees, agents, affiliates or subcontractors (unless such modification was authorized or approved by any of the foregoing), or (c) problems caused by the Server's connectivity to County's network. If Contractor is requested by County to service such matters, County shall pay Contractor an additional fee for such support services.

9.4.5 **Risks Considered.** Contractor's pricing reflects the allocation of risks and limitation of liability in this Contract.

## 9.5 WARRANTIES

9.5.1 Contractor shall perform warranty services as set forth in this Contract.

1. The System shall be in substantial compliance with the Specifications and with the descriptions and representations (including, but not limited to, Deliverable documentation, performance capabilities, accuracy, completeness, characteristics, specifications, configuration, standards, functions and requirements applicable to professional software design meeting industry standards) set forth in *Exhibit A - Statement of Work* and its Attachments.
2. All tasks, subtasks, Deliverables, goods, services, and other work shall be performed in a timely and professional manner by qualified personnel.
3. All tasks, subtasks, Deliverables, good, services, and other work shall be completed in accordance with this Contract, Deliverable documentation and manufacturer's specifications.

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4. The System components shall be capable of interconnecting and/or interfacing with each other, when taken together, shall be capable of delivering all of the functionality as set forth in this Contract (including, without limitation, the Specifications and *Exhibit A - Statement of Work* and Attachments thereto).
5. Contractor shall not knowingly cause any unplanned interruption of the operations of, or accessibility to the System or any System component through any device, method or means including, without limitation, the user of any "virus," "lockup," "time bomb," or "key lock," "worm," device or program, or disabling code, which has the potential or capability of compromising the security of County's confidential or proprietary information or of causing any unplanned interruption of the operations of, or accessibility of the System or any System component to County or any User or which could alter, destroy, or inhibit the User of the System, any System component, or the data contained therein (collectively referred to for purposes of this Subsection as "Disabling Device(s)" which could block access to or prevent the use of the System or any System component by County or Users. Contractor represents, warrants and agrees that it has not purposely placed, nor is it aware of, any Disability Device on any System component provided to County under this Contract, nor shall Contractor knowingly permit any subsequently delivered System component to contain any Disabling Device, other than lock-offs contained on the delivered media which only prevents user of software contained on such media other than System components.
6. The System shall be in substantial compliance with the performance standards set forth in Attachment I (Performance Standards Requirements) of *Exhibit A - Statement of Work*.
7. Provided that County is paying the fee listed in *Exhibit B - Pricing Schedule* for services pursuant to Subsection 5.2 (Basic Monthly Maintenance and Support) of *Exhibit A - Statement of Work*, then all Updates, enhancements, improvements, releases or version of the System, or any component or module of the System (other than Customization), and all available Documentation related thereto, shall be provided to County, at no additional cost over and above the sums otherwise payable by County.
8. Contractor shall use its best efforts to prevent viruses from being incorporated or introduced into the System, or Updates or enhancements thereto prior to delivery thereof to County, and shall utilize its best efforts to prevent any viruses being incorporated or introduced in the process of Contractor's loading of the System, Updates and enhancements thereto, or being introduced in the process of Contractor's performance of online support.

**9.5.2 Additional Warranties**

Contractor further represents, warrants, covenants and agrees throughout the term of this Agreement to all of the following in providing the System, conversions, and services of Contractor described herein:

1. County shall be entitled to use the System and all System components subject only to County's obligation to make the required payments under this Contract. Contractor represents and warrants that this Contract is neither subject nor subordinate to any right or claim of any third party, including, without limitation, Contractor's creditors. Further, Contractor represents and warrants that during the term of this Contract, it shall not subordinate this Contract or any of its rights hereunder to any third party without the prior written consent of County, and without providing in such subordination instrument for non-disturbance of County's use of the System and System components in accordance with this Contract.
2. Contractor shall escrow the Source Code for the account of the County, subject to the provisions of Section 9.2.1 (Escrow).
3. Contractor is duly authorized to grant to County all rights, including, but not limited to, license rights, granted by this Contract with respect to all Application Software.

#### **9.5.3 Continuous Product Support**

If Contractor assigns this Contract, is acquired, becomes otherwise controlled by another individual or entity, or sells, assigns, or transfers more than fifty percent (50%) of its interest in the System (generically referred to as a "Successor Event"), such successor shall assume in writing all of the obligations of Contractor under this Contract.

#### **9.5.4 Third Party Software**

Certain Application Software (herein "Third Party Software"), is owned by third parties. Contractor hereby represents and warrants that none of the System other than the Third Party Software is owned by third parties.

##### **1. Modification**

Contractor represents and warrants that it has not modified and shall not modify, nor does Contractor have any need to modify, Third Party Software in order for the System to fully perform in accordance with warrants that it does not have any license or other right to modify Third Party Software and that Third Party Software shall be provided to County in the same unmodified form as received by Contractor from the applicable third party. Contractor represents and warrants that Third Party Software shall, together with the remainder of the System, fully satisfy all requirements of the Contract without the need for any modification of Third Party Software by Contractor or otherwise.

##### **2. License Agreement**

County acknowledges that it may have to execute certain third party license agreements in respect to third party software. To the extent that any such third party license agreement conflicts with this Contract as it applies to County's right to use or modify the System, Contractor shall

take all necessary action and pay all sums required to provide County with all the rights to use and modify the System afforded by this Contract. Contractor warrants that whether or not such third party license agreements are required of County, County shall receive perpetual licenses of all third party software that shall allow use of the System in accordance with all of the terms of this Contract, providing County pays any required maintenance fees.

3. In the event it nonetheless becomes necessary to modify third party software to satisfy any of the requirements of this Contract, Contractor shall promptly, at no cost to County, either : (1) obtain a license from the appropriate third party which shall enable Contractor to modify such third party software, and Contractor shall provide all necessary modifications or (2) provide an upgrade or alternative solution, which is functionally equivalent, in County's Contract Administrator's reasonable determination, in lieu of modifying such third party software. If County exercises its option to terminate this Contract for convenience pursuant to Section 8.42 (Termination for Convenience), the obligations of Contractor as set forth in this Subsection shall be null and void. Nothing herein shall require Contractor to pay for a new release, version, or revision of third party software, which is not otherwise provided under maintenance and support.

#### **9.6 TIME IS OF THE ESSENCE**

Time is of the essence for Contractor under performance of this Contract.

#### **9.7 CONTRACTOR'S OBLIGATIONS AS A "BUSINESS ASSOCIATE" UNDER THE HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996 (HIPAA)**

County is subject to the administrative simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Under this Contract, Contractor provides services to County and Contractor receives, has access to, and/or creates Protected Health Information as defined in *Exhibit I - Contractor's Obligations as a "Business Associate" Under Health Insurance Portability & Accountability Act of 1996 (HIPAA)* in order to provide those services. County and the Contractor therefore agree to the terms of *Exhibit J*.

#### **9.8 CONFIDENTIALITY OF COUNTY RECORDS**

- 9.8.1 Contractor shall maintain the confidentiality of all records and information, including, but not limited to, billings, County records, claimant/plaintiff records and similar information, in accordance with all applicable Federal, State and local laws, regulations, ordinances, guidelines and directives relating to confidentiality. Contractor shall inform all of its officers, employees and agents providing services hereunder of the confidentiality provisions of this Contract. Contractor shall provide to County an executed *Exhibit F - Contractor Acknowledgement and Confidentiality Agreement* for each of its employees performing work under this Contract in accordance with Section 8.22 (Independent Contractor Status). Contractor shall indemnify and hold harmless County, its officers, employees, and agents, from and against any and all loss, damage, liability, and expense, including, but not limited to, defense costs and legal, accounting and other

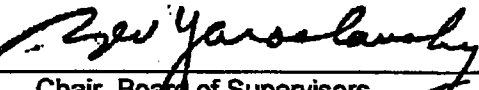
CONTRACT FOR SOFTWARE MAINTENANCE AND APPLICATION HOSTING SERVICES

expert, consulting or professional fees, arising from any disclosure of such records and information by Contractor, its officers, employees, or agents, except for any disclosure authorized by this Section 9.8.

- 9.8.2 With respect to any identifiable information concerning any claimant/plaintiff that is obtained by Contractor, Contractor shall: (1) not use any such information for any purpose whatsoever other than carrying out the express terms of this Contract; (2) promptly transmit to County all requests for disclosure of any such information; (3) not disclose, except as otherwise specifically permitted by this Contract, any such information to any person or organization other than County without County's prior written authorization that the information is releasable; and (4) at the expiration or termination of this Contract, return all such information to County or maintain such information according to the written procedures sent to Contractor by County for this purpose.

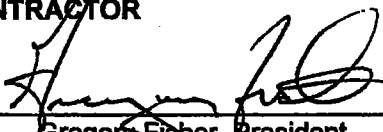
IN WITNESS WHEREOF, Contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Mayor of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

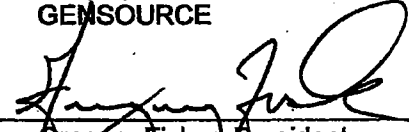
COUNTY OF LOS ANGELES

By   
Chair, Board of Supervisors



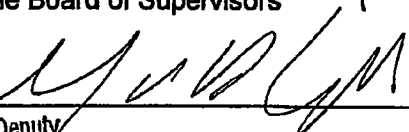
CONTRACTOR

By   
Gregory Fisher, President  
GENSOURCE

By   
Gregory Fisher, President  
STRATACARE, INC.

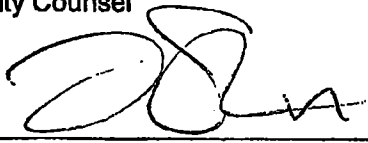
ATTEST:

SACHI A. HAMAI  
Executive Officer-Clerk  
of the Board of Supervisors

By   
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.  
County Counsel

By   
Jose Silva  
Principal Deputy County Counsel

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

# 19

FEB 13 2007

  
SACHI A. HAMAI  
EXECUTIVE OFFICER



**STATEMENT OF WORK****1.0 BACKGROUND**

COUNTY has a license for an automated Workers' Compensation (WC) Claims Administration System from GenSource Corporation.

COUNTY contracts with WC third party administrators (WC TPAs) to provide claims administration. Along with the WC TPAs, the WC Claims Administration System is used by over 300 end users to process, monitor, and report on COUNTY workers' compensation claims. System maintenance is required to ensure timely and accurate administration and processing of these claims.

**2.0 SCOPE**

This Exhibit A - Statement of Work (SOW) defines the services which CONTRACTOR shall provide to COUNTY on a fixed-price deliverable base which shall include: 1) upgrade to the new CONTRACTOR-based GenIRIS ASP; 2) Basic Monthly Maintenance and Support, and 3) customizations to CONTRACTOR'S identified software package (Software), as defined in Subparagraph 3.10, below.

**3.0 DEFINITIONS****3.1 Acceptance; Accepted**

"Acceptance" or "Accepted" shall mean COUNTY'S written approval of any task, subtask, deliverable, good, services or other work provided by CONTRACTOR to COUNTY, consistent with the requirements in Subparagraph 4.1.4, herein.

**3.2 COUNTY Fiscal Year**

As used herein, COUNTY Fiscal Year (FY) shall mean the twelve (12) month period beginning July 1<sup>st</sup> and ending June 30<sup>th</sup>.

**3.3 Customization(s)**

Customizations shall mean any change(s) to the System not covered under the Basic Monthly Maintenance and Support and pursuant to Subparagraph 5.1, GenIRIS ASP Implementation herein.

**3.4 Deficiency(ies)**

Deficiency(ies) shall mean and include defect(s) in design, development, programming, implementation, materials, or workmanship; error(s); omission(s); deviation(s) from published or mutually agreed upon standards, or from any of the Specifications, or from any COUNTY-approved Deliverables; or other problem(s) which result in the System not performing in accordance with the provisions of the Contract, including, without limitation, the Specifications.

**3.5 Deliverable(s)**

Deliverable(s) shall mean any task, subtask, item, and/or a service or other consideration to be provided by CONTRACTOR under the Contract.

**3.6 Final Acceptance**

Final Acceptance shall mean COUNTY'S sole and absolute discretion to approve in writing the work performed.

- 3.7 FROI-SROI – EDI  
FROI-SROI – EDI shall mean First Report of Injury-Subsequent Report of Injury – Electronic Data Interface. COUNTY is required by the State of California (State) to report all injuries to the State.
- 3.8 GenIRIS ASP  
GenIRIS ASP shall mean the web enabled version of the GenIRIS application; a graphics based version of the GenCOMP software.
- 3.9 GenSource Hardware (Hardware)  
Hardware shall mean but is not limited to all equipment purchased by CONTRACTOR necessary to operate COUNTY'S WC Claims Administration system, including equipment purchased by any of CONTRACTOR'S Subcontractor(s).
- 3.10 GenSource Identified Software Package (Software)  
Software shall mean all GenSource applications necessary to successfully run COUNTY'S WC Claims Administration System as established by COUNTY. Software shall also mean third party software as described in Subparagraph 3.19, below. Software shall include but is not limited to:
- ◆ GENCOMP – a character based application running on a legacy system that provides claims administration functions.
  - ◆ GENLEGAL – a GenComp sub-system (an application running within the GenComp environment) that provides additional functions for the administration of litigated claims.
  - ◆ Data Warehouse – Data store capturing data from the claims database for simple and efficient reporting.
- 3.11 Hosting Services  
Hosting Services shall mean the secure environment set-up and maintained by CONTRACTOR at CONTRACTOR'S facility, in which COUNTY data is retained.
- 3.12 Implementation Package  
Implementation Package shall mean the documents listed below that describe the procedures to design and implement a project for requested and/or required changes to COUNTY'S WC Claims Administration System. The documents listed below should include, without limitation, a detailed work plan, work breakdown structure, beginning and completion dates of phases, Gantt chart, staffing resources and organization. The Implementation Packages submitted pursuant to this SOW, shall automatically become a part of the Contract immediately upon COUNTY'S approval following their delivery. Implementation Packages are subject to final approval by COUNTY and may be requested at the sole discretion of COUNTY. Implementation Packages will include at minimum:
- a. Hardware and Communications Requirements Document
  - b. Requirements Package
  - c. Requirements Document
  - d. UniVerse Descriptors
  - e. ASP Connection Documentation
  - f. Training Materials (electronic)
  - g. Final Implementation Procedures

- 3.13 Maintenance Schedule  
Maintenance Schedule shall mean the time allotted for CONTRACTOR to run daily, normal, routine maintenance, as approved by COUNTY.
- 3.14 Phase(s)  
Phase(s) shall mean the organization of work to be executed and delivered in the Implementation Package as defined in Subparagraph 3.12, above.
- 3.15 Software License  
Authorized use of CONTRACTOR'S Software as listed in Subparagraph 3.10, above, the payment for which is included in the Basic Monthly Maintenance and Support fee.
- 3.16 Source Code  
Source Code shall mean:
- 3.16.1 one printed copy of a listing of the source language code (human-readable and maintainable program instructions) for the System;
  - 3.16.2 one copy on magnetic medium of the source language code for the System;
  - 3.16.3 one copy on magnetic medium of all control files, CONTRACTOR provided tables and job control language;
  - 3.16.4 all documentation provided by CONTRACTOR; and
  - 3.16.5 all maintenance tools (test programs and program specifications), descriptions of proprietary or third-party system utilities (including compilers, library packages, linkers or assemblers), with instructions for compiling and linking the source code into executable forms, a description of the system/program generation procedure, and a list, including detailed descriptions and names and addresses, of the owners of software, firmware, licenses or other third-party proprietary interests necessary or desirable to enable COUNTY to use or support the System.
- 3.17 Specifications  
Specifications as used herein shall mean the functional and operational requirements/features as set forth in this SOW and Attachment I.
- 3.18 System  
System shall mean all Software, Hardware, third party software, customizations, conversion, interfaces, databases and services described in this Contract and as otherwise agreed to in writing by CONTRACTOR and COUNTY pursuant to Subsection 8.4 (Change Notices and Amendments), of the Contract, collectively comprising the Workers' Compensation Claims Administration System. Reference to the System may include one or more components or modules thereof or the entire System.
- 3.19 Third Party Administrators  
Third Party Administrators shall mean the identified, contracted organizations that handle workers' compensation claims administration for COUNTY.

**3.20 Third Party Software**

Third Party Software shall mean application software owned by third parties which COUNTY may or may not have a license to use, but is necessary to run COUNTY'S WC Claims Administration System. If COUNTY does not have a license to use the necessary third party software, CONTRACTOR shall purchase a license for use at no additional charge to COUNTY. Third party software shall include but is not limited to:

- ◆ Citrix Software – Software used for application publishing and for providing a secure gateway for client access to GenSource applications.
- ◆ Microsoft Software – Operation system and various other software used throughout the ASP environment.
- ◆ AIX – Operating system for the database server.
- ◆ SQL Server 2005 – Database software used for the Data Warehouse.
- ◆ WIntegrate – Report generator.
- ◆ English Wizard – Query and reporting tool used to ask "English" questions to query against the database.
- ◆ UniVerse – Database software.

**3.21 User**

User shall mean any person or entity authorized by COUNTY to access or use the WC Claims Administration System or a System Component.

**3.22 Work Order(s)**

Work Order(s) shall mean a fully executed project ordering document for customizations to be provided by CONTRACTOR upon COUNTY'S request and approval in accordance with the Contract. Each Work Order executed under the Contract shall adhere to the format described in Exhibit A, Attachment II.

**4.0 RESPONSIBILITIES**

COUNTY'S and CONTRACTOR'S responsibilities are as follows:

**4.1 COUNTY'S RESPONSIBILITIES**

COUNTY will administer the Contract according to Section 6.0 (Administration of Contract – COUNTY) of the Contract. Specific duties will include:

- 4.1.1 Monitor CONTRACTOR'S performance in the daily operation of the Contract.
- 4.1.2 Provide direction to CONTRACTOR in areas relating to policy, information and procedural requirements.
- 4.1.3 Prepare Change Notices in accordance with Subsection 8.4 (Change Notices and Amendments), of the Contract.
- 4.1.4 **Approval and Disapproval of Work**  
COUNTY shall have the right to approve or disapprove of any work, task, deliverable, work order, goods, services and other work provided by CONTRACTOR.

In the event COUNTY disapproves of any work, task, deliverable, work order, goods, services and other work provided by CONTRACTOR, CONTRACTOR shall have ten (10) days from CONTRACTOR'S receipt of written notice of disapproval to correct, modify, supplement or otherwise remedy such disapproved matter and resubmit it to COUNTY for approval. In the event of a subsequent disapproval, COUNTY may request subsequent resubmissions, enter into the Dispute Resolution Process, or declare the Contract in breach.

Unless expressly provided otherwise, any and all approval or acceptance by COUNTY under the Contract may be given, withheld, or denied in COUNTY'S sole and absolute discretion.

#### **4.2 CONTRACTOR'S RESPONSIBILITIES**

4.2.1 CONTRACTOR shall designate a Project Manager who shall be a full-time employee of CONTRACTOR.

4.2.2 The Project Manager shall be the central point of contact for COUNTY and shall act as a liaison for CONTRACTOR in coordinating the performance under the Contract.

4.2.3 The Project Manager shall have the authority to act for CONTRACTOR on all matters relating to the daily operation of the Contract. The Project Manager or alternate shall be able to effectively communicate, in English, both orally and in writing.

4.2.4 CONTRACTOR'S Project Manager or alternate shall attend meetings as requested by COUNTY.

4.2.5 Other CONTRACTOR Personnel

4.2.5.1 CONTRACTOR shall assign a sufficient number of employees to perform the required work under the Contract and to complete all services in a timely manner.

4.2.5.2 All personnel providing services in conjunction with the Contract will be required to sign an Employee Acknowledgement, Confidentiality and Copyright Assignment Agreement, as set forth in Subsection 7.4 of the Contract. During the term of the Contract, CONTRACTOR shall maintain an updated file of the signed forms and shall forward copies of all signed forms to COUNTY'S Project Manager.

4.2.5.3 CONTRACTOR shall, to the maximum extent possible, maintain a constant level of staffing for COUNTY'S Contract. CONTRACTOR shall promptly fill any staff vacancy with employees having qualifications at least equivalent to those of the staff being replaced.

**4.2.6 CONTRACTOR Employee Acceptability**

- 4.2.6.1 CONTRACTOR shall provide COUNTY with the names of its staff assigned to work on COUNTY'S contract.
- 4.2.6.2 CONTRACTOR shall not subcontract with any personnel for performance of services hereunder unless the provisions in Subsection 8.38 (Subcontracting) of the Contract are met.

**4.2.7 Materials and Equipment**

CONTRACTOR shall be responsible for the purchase of all hardware, software and all other materials/equipment necessary to provide these Contract services. CONTRACTOR shall use materials that are safe for the environment and safe for use by the employee.

**4.2.8 CONTRACTOR'S Office and Hours of Operation**

- 4.2.8.1 CONTRACTOR shall maintain an office with a telephone in the company's name where CONTRACTOR conducts business. The office shall be staffed during the hours of 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding holidays observed by CONTRACTOR, by at least one employee who can appropriately respond to the priority level of an issue, any service requests and complaints which may be received about CONTRACTOR'S performance of the Contract. CONTRACTOR will provide COUNTY with a phone number to call when the office is closed.

- 4.2.8.2 Emergency Notifications

CONTRACTOR'S and COUNTY'S Project Managers, or their respective designees, shall be accessible twenty-four (24) hours a day, seven (7) days per week to each other and/or other COUNTY staff for emergency reporting or consultation. CONTRACTOR shall provide an emergency telephone number where CONTRACTOR'S Project Manager, or designee, may be reached on a twenty-four (24) hour per day basis.

**5.0 SPECIFIC WORK REQUIREMENTS**

It is COUNTY'S expectation that CONTRACTOR will complete the tasks described below in a manner which will contribute to and result in completion of the deliverables outlined herein. CONTRACTOR shall be responsible for any penalty incurred due to the failure of CONTRACTOR'S hardware, software, or hosting services as defined in this Statement of Work, providing such failure is not caused by an unreasonable delay or unreasonable lack of cooperation by COUNTY.

**5.1 GENIRIS ASP IMPLEMENTATION**

Upon Contract execution, CONTRACTOR shall be responsible for 1) initial migration of COUNTY'S WC Administration database from COUNTY'S hosted

server to CONTRACTOR'S hosted server; and 2) converting COUNTY'S WC claims data into a format appropriate for the new GenIRIS ASP; and 3) implementing the GenIRIS ASP for all current Users on the COUNTY'S hosted server. The GenIRIS ASP Implementation shall be deemed completed upon written acceptance and approval by COUNTY. CONTRACTOR shall:

#### **5.1.1 Task #1 – GenIRIS Configuration and Data Migration**

##### **Deliverable: Implementation Package**

CONTRACTOR shall deliver to COUNTY an Implementation Package no later than five (5) days after the Effective Date of the Contract. CONTRACTOR and COUNTY shall review and revise all documents provided in the Implementation Package as necessary. CONTRACTOR shall submit the final Implementation Package within twenty (20) days following the Effective Date. All documents provided in the Implementation Package shall be comprehensive in scope and breadth and set forth in detail the work plan proposed by CONTRACTOR and COUNTY to install, configure and make operational, directly or through subcontractors, the System. The Implementation Package in whole and in part is subject to final COUNTY approval. Documents to be provided by CONTRACTOR for this specific Task #1 shall be:

- a. Hardware and Communications Requirements Document
- b. Requirements Package
- c. Requirements Document
- d. UniVerse Descriptors
- e. ASP Connection Documentation
- f. Training Materials (electronic)
- g. Final Implementation Procedures

These documents shall fully describe the expectations and requirements of the WC Claims Administration System including, but not limited to:

- a. Software customizations, interfaces, and reports that will be required;
- b. Impacts to current business processes;
- c. Overall approach/strategy for migrating the data of the WC Claims Administration System to CONTRACTOR'S hosted server, data conversion, software and performance testing, training, and implementation of the GenIRIS ASP;
- d. Technical architecture
  - Technical schematic and topology of hardware, software and network;
  - Technical specifications of servers;
  - System Performance assumptions (number of concurrent users, volume of transactions and target system response times).

**5.1.2 Task #2 – Implementation****Deliverable: Final Acceptance**

CONTRACTOR shall perform the following implementation tasks necessary to successfully migrate COUNTY'S WC Administration database from COUNTY'S hosted server to CONTRACTOR'S hosted servers:

- Install and configure the GenIRIS application in CONTRACTOR'S hosted servers based on the Implementation Package;
- Convert all workers' compensation data in accordance with new application specifications, and demonstrate that the data is accessible via the new System without VPN access;
- Provide current disaster recovery plan to clearly demonstrate precautions CONTRACTOR shall take to ensure all data and records are migrated successfully to CONTRACTOR'S hosted server, and to specify the length of time the recovery will require;
- Satisfactorily QA test and demonstrate required System capabilities based on COUNTY's requirements and configuration for all processes and procedures described herein, to ensure System can accept any input and output in order to meet all service requirements.
- Satisfactorily test and demonstrate required online inquiry and report generation capabilities of GenIRIS utilizing COUNTY worker's compensation data;
- Support COUNTY in its User Testing Acceptance by providing technical operations support, as well as reviewing and resolving reported test incidents;
- Support COUNTY planning and execution of a Performance Test by monitoring System performance during test execution, recording performance test results, as well as identifying and implementing hardware, software and database tuning recommendations;
- Provide seven days of training comprised of:
  - 2 days of trainer training for up to 15 students using the new System using non-COUNTY data;
  - 3 days of trainer training for up to 15 students using the new System and COUNTY-specific workers' compensation data; and
  - 2 days of system administration and data mart training utilizing COUNTY'S workers' compensation data.
- Conduct production cutover to include:
  - Converting all data required for COUNTY operations;
  - Performing all configuration required for COUNTY operations; and



- o Completing all preparations for COUNTY operations utilizing the System.

Minimum requirements for Final Acceptance include but are not limited to:

- COUNTY'S written verification of converted data for production operations;
- Successful completion of COUNTY'S User Acceptance Test;
- CONTRACTOR'S successful completion of its quality assurance evaluation, including identification and correction of any noted deficiencies;
- Completion of all user training; and
- Completion of production cutover activities.

## **5.2 BASIC MONTHLY MAINTENANCE AND SUPPORT**

CONTRACTOR shall maintain all Software and Hardware necessary to successfully operate the System, including third party software, in reliable and fully operational condition.

Basic Monthly Maintenance and Support shall include but is not limited to: maintenance and support, Software updates, data processing support and maintenance, hosting services, and FROI/SROI-EDI support.

Upon receiving notification by COUNTY of any deficiency or repair found in any of the tasks listed in this Subparagraph 5.2, CONTRACTOR shall take Corrective Actions, as prescribed in the Service Level Agreement, Attachment II of this SOW.

CONTRACTOR shall provide the following:

### **5.2.1. Task #3 – Maintenance and Support Services**

**Deliverable: Services performed as prescribed in the Service Level Agreement**

Maintenance and support services shall include but are not limited to any repair or maintenance required to the existing Software, Software licenses, and/or Hardware provided by the CONTRACTOR, and to third party software. Services shall also include assistance for inquiries and troubleshooting related to the CONTRACTOR'S Software and/or Hardware and third party software. CONTRACTOR shall:

- Assist Users with any technical issues;
- Perform routine system maintenance as defined in Paragraph 6.0, Maintenance Schedule;
- Increase Software Licenses upon written request from COUNTY;
- Diligently monitor CONTRACTOR'S Software, Hardware and third party software;

- Correct, issue and/or install Software and/or Hardware, such as security patches, whether or not defects have been reported to CONTRACTOR by COUNTY;
- Provide all technical personnel, equipment and tools sufficient to perform timely, effective repairs;
- Diagnose the reported problem and advise COUNTY of the estimated time to repair;
- Repair the reported problem, provide a procedure to work around the problem, or substantiate the determination that no repair is necessary;
- Test all repairs to ensure that the repair was successful and that the operation is defect-free;
- Coordinate all technical support services with COUNTY;
- Fully document any and all repair work provided to COUNTY; and
- Respond to any questions.

**5.2.1.1     Software Licenses**

Additional Software Licenses requested by COUNTY shall be billed separately and in accordance with Subsection 5.6 (Invoices and Payments) of the Contract.

**5.2.1.2     Software Updates**

Provided that the Contract is still in effect at the end of the second anniversary of the Contract date, and every two years thereafter, CONTRACTOR will make an Upgrade to the Software available to COUNTY. "Upgrade" means a routinely-issued revision of the Software, generally issued for the purpose of correcting discovered errors, improving efficiency or overall performance and incorporating enhancements or statutory changes that CONTRACTOR makes generally available to its customers of the Software but does not include customizations that include departures from the standard specifications with regard to functionality or enhancements or added features or functions. There shall be no installation charge for any Upgrade which can be installed remotely without customization. COUNTY will cooperate as necessary to allow installation of any Upgrade and understands that its failure to do so may, in CONTRACTOR'S sole discretion, relieve CONTRACTOR of any subsequent obligation under this provision. All Upgrades shall be delivered to COUNTY electronically via CONTRACTOR'S host server.

**5.2.1.3     Date Processing Support and Maintenance**

CONTRACTOR shall provide biennial Upgrades and identify all date processing routines that will be affected by data entered for the current Fiscal Year (FY). CONTRACTOR shall determine the required changes to each date processing routine to ensure the current FY will be correctly processed.

For date processing routines that require changes, CONTRACTOR shall:

- Identify all date processing routines and the changes required to handle current FY data input or output. This shall include data acceptance and internal calculations of dates up to and beyond the current FY.
- Submit a list of routines to be corrected to COUNTY;
- Make corrections to program code and test;
- Provide COUNTY with documentation of processing changes and data entry requirements for entering the current FY in date formats;
- Assist COUNTY as required in testing the date entry of the current FY;
- Upon successful completion of COUNTY'S testing of data routines, install the defect-free replacement of relevant application code on the COUNTY data server.

#### 5.2.1.4 Hosting Services

Hosting Services shall be CONTRACTOR'S responsibility to provide a secure and efficient environment to house COUNTY'S WC Administration application and database. CONTRACTOR shall:

- Provide dedicated database server(s) for COUNTY use only, not shared with other CONTRACTOR clients; and
- Provide adequate data storage to accommodate COUNTY'S current and future needs.

The Service Level Agreement requirements are listed in Attachment I of the SOW.

### 5.3 FROI/SROI – EDI EXPORT FORMAT SERVICES

CONTRACTOR shall provide the functionality to allow COUNTY to:

- Provide claims data in readable formats to supply to the agreed upon EDI Exporter responsible for exporting data to the State;
- Provide the functionality to ensure that all claims that have been acknowledged by the State are documented as such, whether approved or denied; and
- Provide the functionality to allow COUNTY to furnish reports to TPAs listing claims that require correction as directed by the State.

#### 5.3.1 Task #4: FROI/SROI – EDI Export Format Services

##### **Deliverable: Compliant FROI/SROI Reporting**

The acceptance criteria for the Task #4 Deliverable - Compliant FROI/SROI Reporting, shall provide the functionality to allow COUNTY to:

- Report successfully and timely to the State within the mandated deadlines, namely provision of correctly formatted claims data ready for export with the frequency established by COUNTY;
- Capture all acknowledgements from State;
- Provide accurate reporting back to TPAs of acknowledgements;

In the event COUNTY determines it is in its best interest to change the agreed upon EDI Exporter, CONTRACTOR shall continue to be responsible for all duties listed in this Subparagraph 5.3.1 and in the Contract in whole.

The Software will provide the means by which COUNTY may run data routines and report data to the EDI Exporter and the State. Under no circumstance shall the CONTRACTOR be responsible for any penalties applied from the State caused by any action or deficiency by COUNTY or the EDI Exporter in running routines or reporting data.

#### 5.4. CUSTOMIZATIONS

CONTRACTOR shall make customizations during the life of the Contract as requested, approved and accepted by COUNTY. COUNTY shall pay a minimum of two hours at the rates listed in *Exhibit B - Pricing Schedule*, Customization Costs (Hourly Rate), for CONTRACTOR to examine the feasibility of and to develop preliminary specifications for the requested customization. The estimate shall be priced on a time and materials basis and shall be capped at the number of hours agreed upon to execute the customization. The estimate submitted by CONTRACTOR as stated on the Authorization for Billable Services form shall be valid for 60 days from the date submitted. All completed customizations shall be subject to final COUNTY approval and shall automatically become a part of the Contract. Should CONTRACTOR find that a customization to an upgraded and/or updated application is not feasible, CONTRACTOR shall provide its written justification to COUNTY within seven (7) business days upon reaching such finding. CONTRACTOR shall provide the following:

##### 5.4.1 Task #5- General Customizations

###### **Deliverable: Software Customization**

COUNTY shall submit the RFE form, as provided in *Exhibit L*, to initiate customization requests.

#### 6.0 MAINTENANCE SCHEDULE

To mitigate delays in System performance, CONTRACTOR shall provide all daily, routine and normal system maintenance between the hours of 10:00 p.m. through 6:00 a.m. Pacific Time, seven (7) days per week. Should CONTRACTOR find that an unexpected irregular maintenance service needs to be performed outside of the Maintenance Schedule, CONTRACTOR shall attempt to provide COUNTY with 48 hours notice of such maintenance. COUNTY and CONTRACTOR may request to change the Maintenance Schedule pursuant to Subsection 8.4 (Change Notices and Amendments) of the Contract, however, COUNTY shall have the right to final acceptance and approval of any such change.

## 7.0 DATA STORAGE

All COUNTY data shall be stored on CONTRACTOR'S equipment at CONTRACTOR'S place of business listed in *Exhibit E – CONTRACTOR'S Administration*. In the event CONTRACTOR should find that COUNTY data in whole or in part must be transferred to another location within the continental U.S., CONTRACTOR must notify COUNTY prior to such transfer. If CONTRACTOR should find that COUNTY data in whole or in part must be transferred to a location outside the continental United States, CONTRACTOR must obtain COUNTY'S approval prior to such transfer. CONTRACTOR will provide such transfer at its own expense, and COUNTY shall not be responsible for any related interruptions or impairments of the Hosting Services, as described herein.

CONTRACTOR shall provide COUNTY with at least 60 days notice of its intent to transfer COUNTY data to any other location. CONTRACTOR shall include the following detailed information at minimum:

- Purpose for transferring the data;
- Address of the new location;
- Transfer timeline;

COUNTY, at its discretion, may require an Implementation Package to be provided for this transfer, as defined in Subparagraph 3.12, of this SOW.

## 8.0 SECURITY

CONTRACTOR shall provide COUNTY with documented proof of the program measures taken to safeguard COUNTY data housed by CONTRACTOR, including the security of the environment in which COUNTY data is imported and exported to and from CONTRACTOR. The proof document must include the architectural design of the security program pursuant to the requirements of the Contract.

## 9.0 OWNERSHIP AND TRANSITION

All computerized claim data and computerized claim files shall be the property of COUNTY and shall be returned to COUNTY or delivered to a new service provider, as designated by COUNTY. It is understood that the information described above is the property of COUNTY and not CONTRACTOR.

Upon expiration or termination of the Contract or in the event that COUNTY elects not to renew the Contract at the end of its term, or otherwise terminates the Contract for default, convenience or insolvency, CONTRACTOR shall fully cooperate with COUNTY to provide for the transition to whatever service replacement method COUNTY determines to be in its best interest.

## 10.0 TRAINING

In the event COUNTY should require training for services not listed in Subparagraph 5.2, herein, CONTRACTOR shall provide training at the rates listed in *Exhibit B – Pricing Schedule*. CONTRACTOR shall recommend training curriculum and provide a qualified instructor, related training materials and a training facility.

**10.1 Instructor's Travel and Lodging Expenses**

Travel and lodging expenses of CONTRACTOR'S instructors providing training under the Contract shall be billed separately. The invoices for such expenses shall be prepared and submitted in accordance with Subsection 5.6 (Invoices and Payments), of the Contract.

**11.0 MINIMUM REQUIREMENTS FOR USERS**

CONTRACTOR shall provide COUNTY with a list of minimum requirements needed for all System Users (including, but not limited to, CAO, County Counsel, client County departments and WC TPAs) to utilize the System. The list of minimum requirements shall include, at minimum, connectivity requirements, hardware equipment and software applications. CONTRACTOR shall contact Users for requirements information, as instructed by COUNTY.

**12.0 REPORT DESIGN**

CONTRACTOR shall continue to provide and/or make available, with the same frequency and distribution, all reports currently being received and/or accessed by COUNTY.

**13.0 QUALITY ASSURANCE PLAN**

COUNTY shall evaluate CONTRACTOR'S performance under the Contract using the quality assurance procedures, as defined in Subsection 8.15 (COUNTY'S Quality Assurance Plan), of the Contract.

**14.0 BUSINESS CONTINUITY PLAN**

CONTRACTOR shall, within thirty (30) days of Contract implementation, provide to COUNTY a written business continuity plan describing a structured and integrated process that ensures uninterrupted provision of critical services related to the Contract following any event which could interrupt these business operations. The plan shall include, but not be limited to, the following:

- CONTRACTOR policies and procedures to assure COUNTY'S continued operation following an event;
- A description of COUNTY critical services and business processes prioritized in their importance;
- Establish viable recovery time frames relative to its impact to COUNTY'S operation;
- Address, computer, telephone, facsimile, key contact and all other critical information concerning alternative business processes and/or location(s) following an event.

CONTRACTOR shall provide COUNTY with annual plan updates, due on the anniversary of the Contract.

This plan is subject to the approval of COUNTY. COUNTY shall not be required to identify deficiencies in CONTRACTOR'S Business Continuity Plan. COUNTY shall neither assume responsibility nor liability for CONTRACTOR'S Business Continuity Plan.

**15.0 PERFORMANCE STANDARDS REQUIREMENTS (PSR) AND SERVICE LEVEL AGREEMENT (SLA)**

The PSRs and the SLAs (SOW, Attachment I) are intended to be completely consistent with the Contract and the SOW, and are not meant in any case to create, extend, revise, or expand any obligation of CONTRACTOR beyond that which is defined in the Contract and the SOW. In any case of apparent inconsistency between services as stated in the Contract, the SOW, the PSR, and the SLAs, the meaning apparent in the Contract and SOW will prevail. If any service seems to be created in the PSR or the SLA which is not clearly and forthrightly set forth in the Contract and the SOW, that apparent service will be null and void and place no requirement on CONTRACTOR.

**EXHIBIT A**  
**Attachment I**

**PERFORMANCE STANDARDS REQUIREMENTS CHART**

When CONTRACTOR'S performance does not conform to the requirements of the Contract or if CONTRACTOR does not meet or maintain the agreed upon service levels, the COUNTY will have the option to apply the following remedies providing such failure is not caused by an unreasonable delay or unreasonable lack of cooperation by COUNTY:

STANDARD	PENALTY
1. Deliverables for Task #1: Implementation Package	Failure to meet the expectations of any part of this Deliverable may result in a penalty of up to 10% of the Implementation Costs listed in <i>Exhibit B – Pricing Schedule</i> .
2. Deliverables for Task #2: Final Acceptance	Failure to meet the expectations of any part of this Deliverable may result in a penalty of up to 15% of the Implementation Costs listed in <i>Exhibit B – Pricing Schedule</i> .
3. Deliverables for Task #3: Maintenance and Support Services	Failure to meet any part of this Deliverable may result in a penalty of up to 10% for each failed Deliverable but no more than 50% of the Basic Monthly Maintenance and Support Services costs listed in <i>Exhibit B – Pricing Schedule</i> . Penalties shall be determined by COUNTY and may be ongoing until deliverables are completed to COUNTY'S satisfaction.
4. Deliverables for Task #4: Compliant FROI/SROI Reporting	Failure to meet the terms of this Deliverable as a result of CONTRACTOR'S negligence may result in a penalty of up to 15% of the FROI/SROI State Reporting annual costs listed in <i>Exhibit B – Pricing Schedule</i> . Penalties shall be determined by COUNTY and may be ongoing until deliverable is completed to COUNTY satisfaction. Under no circumstance shall the COUNTY be responsible for any penalties applied by the State due to any action or deficiency for which CONTRACTOR or Subcontractor is responsible.



**SERVICE LEVEL AGREEMENT (SLA)**

**I. Maintenance and Support Services**

**A. Technical Support**

1. CONTRACTOR shall provide Help Desk support via phone, facsimile and/or email. The COUNTY has and will continue to have a dedicated support representative along with backup representatives in the event its dedicated representative is unavailable.
2. CONTRACTOR and COUNTY shall jointly prioritize all issues, defects and other errors according to the following schedule.

PRIORITY	DEFINITION
1	A problem causing critical impact to COUNTY'S operation and no acceptable workaround is immediately available. CONTRACTOR shall respond to COUNTY within two hours. After normal business hours, including weekends, CONTRACTOR shall respond to notifications made by COUNTY's Project Manager or his or her designee within two hours of such notification. Work begins as soon as possible after notification and continues until problem is resolved or a workaround is available. If resolution requires a software correction, it is delivered to COUNTY as soon as the correction is available.
2	A problem causing significant (but not critical) impact to COUNTY'S operation and no acceptable workaround is immediately available. Work begins after COUNTY'S priority 1 issues are resolved per definition 1 above, and continues until the problem is resolved or a workaround is available. If resolution requires a software correction, it is delivered to COUNTY as soon as the correction is available.
3	A problem that impairs functionality or performance, but COUNTY can work around it without undue effort. CONTRACTOR will investigate the problem, decide if workaround is acceptable and if resolution requires a software correction. If a software correction is required CONTRACTOR may schedule the correction for a future release and/or provide patch as soon as possible.
4	A request for information or assistance that is not of a serious nature, but that cannot be handled immediately over the phone. A software error or defect exists but does not impede any functionality or performance. CONTRACTOR will suggest a workaround to COUNTY. If a software correction is required CONTRACTOR may schedule the correction for a future release and/or provide a patch as soon as possible.

**B. Hardware Maintenance**

All servers are constantly monitored and updated with the latest patches and releases from each respective vendor. Microsoft security patches are maintained using WSUS (Windows Security Update Server). These patches are downloaded and installed automatically upon authorization of the network administrator. WSUS polls for updates on an hourly basis and alerts the administrator as soon as patches are available. Service Packs are downloaded as soon as they are available. They are installed on test servers, and then on corporate production servers. Once they have been verified for internal production, then they are scheduled for installation on the ASP environment.

**EXHIBIT A**  
**Attachment I**

1. Upon release of a new version of the operating system or database version, CONTRACTOR will schedule a certifications test. COUNTY will receive regular updates to the application software. As part of the application upgrade, CONTRACTOR will review the operating system and database versions running on the database server. If there is a new version of either that has been certified by CONTRACTOR, it will be installed along with the new version of the application.
2. In addition, as part of the application upgrade, any microcode or firmware updates available for the database server are installed as well. In the event that a maintenance level update for the operating system is determined to be of a critical nature that cannot wait for an application upgrade, it will be scheduled and installed along with any microcode or firmware updates as soon as possible.
3. During each application upgrade, all hardware is reviewed. Any hardware not meeting all functional and security requirements is replaced. The average tenure for servers in the ASP environment is 3 – 5 years.

**C. System Operations**

1. CONTRACTOR ensures system operation service levels as follows:
  - a. 24x7x365 real-time monitoring and alerting of every element of the ASP environment is conducted to track the overall health of systems and proactively address any possible problematic areas.
  - b. Fault-tolerant, redundant and failover systems are in place to ensure high availability, data integrity and that no single points of failure exist for the maximum possible up-time.
  - c. Occasionally the internet service provider that services the GenSource ASP datacenter will perform regularly scheduled maintenance which could affect internet communications to the datacenter. The scheduled maintenance is performed after-hours or on weekends and will be communicated to COUNTY as soon as CONTRACTOR is aware of the planned maintenance which usually ranges from 15 minutes to 1 hour in duration.

**D. Back-up and Discovery Recovery**

1. CONTRACTOR'S back up and recovery services currently in place are:
  - a. Full backups are performed on all production servers nightly. In addition, server images are taken prior to any updates
  - b. Backup tapes are sent to an off-site data storage site each weeknight. The monthly backup set is saved permanently at the site.
  - c. Restore time is dependent on the amount of data needed, the type of restore (software or data) and the date the restore is from. If the required tape is off-site, it can be retrieved in less than 2 hours. The time for a restore could be anywhere from 30 minutes to 4 hours.

**EXHIBIT A**  
**Attachment I**

- d. All servers and communication equipment are connected to an Uninterrupted Power Supply. CONTRACTOR'S current backup site is its Irvine office. CONTRACTOR plans to have its hot-site setup in a hardened data center by Q3 of next year
- 2. The current data center will be equipped with Halon fire extinguishers. The new hot-site will have an early warning smoke detection system that will automatically drop the temperature, as well as smoke detectors that release dry flame retardant. The current data center is accessible only via key cards, which are held by a limited number of personnel.

**E. Software Licenses**

See item B above for operating system updates.

Notifications are immediately provided by each respective software vendor upon the release of any new hot fix or service pack. All hot fixes and service packs are installed and tested in a test environment. Upon successful completion of the test, they are scheduled for installation in production.

As for the claims management applications, a new release will be installed every two years. In the interim, any fixes or enhancements done for the COUNTY or any critical fixes will be installed as soon as they have tested.

**F. Software Updates**

Once a patch has successfully completed CONTRACTOR'S internal quality assurance process, it is installed in a test environment on the COUNTY'S servers. Once CONTRACTOR'S internal QA team has tested it there, the COUNTY will be given the opportunity to test it. Once the COUNTY has given its approval, the changes are moved into the production environment.

Enhancements are normally included in the new version of the software, released each year. The COUNTY'S maintenance plans provides for the installation of a new release every other year. If an enhancement is deemed critical such that it cannot wait for a next version of the software, it would be installed as described above for software patches.

New releases are created once a year. Every other year, the new release will be installed on the COUNTY'S servers. A project manager will be assigned to oversee the installation of the new release and a project plan will be provided to the COUNTY for the installation. A requirements session, training and user acceptance testing will all be included in the plan.

Upon release of any new third party software that integrates with GenIRIS, it is scheduled for compatibility testing. Once tested, the new versions will be installed along with the next application upgrade. If the third party software is shared across the client base, then the new version will be installed for all clients upon the next client upgrade. All clients will be contacted in advance of the change and provided ample time for testing in the test environment.

**GenSource**

***Request for Customization, Billable Services and  
Authorization Procedures***

Updated: 11/08/2006

J.Kubota

This is an overview of the GenSource Client Support procedures for processing Request for Estimates and the Authorization for Billable Services.

**Request for Estimate**

1. Client completes and sends a Request for Estimate (RFE), copy attached, to their GenSource Client Support Representative.
2. Support Rep saves an electronic copy of the RFE in the online Client Support files.
3. Support Rep opens a tracking database case. This database is used for internal work assignments and recording status.
4. Support Rep forwards RFE to upper management for work approval.
5. If approved, support Rep opens a project in a database used for timekeeping and billing purposes.
6. Support Rep sends approval or rejection notice to the client.
7. Support Rep distributes the approved RFE to consulting and the product manager for analysis and design of the project, in order to determine the estimate of work.
8. Support Rep assigns the work in the tracking database to the product manager or consulting.

**AUTHORIZATION FOR BILLABLE SERVICES**

1. Estimator performs the analysis of the project.
2. Estimator gives the estimate to the Support Rep and assigns track back to the Rep for communicating an Authorization of Billable Services to the client.
3. Rep coordinates and collects the estimated hours for completion of the request from all departments.
4. Rep assembles the quote on an Authorization form, copy attached, and emails the quoted Authorization for Billable Services to the client.
  - Rep saves a copy of the Authorization in the online Client Support files.
  - Rep updates the tracking database with the quoted hours and client communication information.
5. The client either:
  - Accepts, signs and returns the Authorization for Billable Services to the Rep, or
  - Rejects the Authorization for Billable Services.
6. If authorization is rejected the project is cancelled in the database and the track is closed.
7. If authorization is accepted, the Rep:
  - Updates the online Client Support files, tracking and project databases;
  - Assigns the work to the product or operations manager; and
  - Distributes the Authorization to appropriate internal department personnel.
8. Monthly hours are invoiced to the client based on actual work completed on the project in the previous month. Invoicing continues through project completion.
9. Upon project completion and internal QA, a service patch is generated and installed on the client's test environment for client testing.
10. The client tests and informs their Rep that the change is approved for production use.
11. The Rep schedules a time for programming to install the program changes into the production accounts.
12. The changes are moved into Live production.

**EXHIBIT A**  
**Attachment II**



Date:		Pages: 1
To:	From:	
Co:	Co: GenSource	
Fax:	Fax:	

**REQUEST FOR ESTIMATE**

**GS Product(s) Involved:** \_\_\_\_\_

**Description of Request:**

**Additional Information Attached?** ☐ Yes / ☐ No  
**Completion Date?** \_\_\_\_\_ (Required)

**Desired Project**

By signing below, you hereby agree to pay GS for up to 16 hours (2 hours minimum) to examine the feasibility of, and to develop preliminary specifications for the Project outlined above on a time and materials basis capped at the agreed upon number of hours. The 2 hour minimum is due even if you or we determine that the Project is not feasible or is not cost effective. However, GS will only proceed with the Project itself upon execution of a signed Authorization For Billable Services based on an estimated budget and completion date provided by GS.

**Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

**Company:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_ **Date:** / /2007

**FOR INTERNAL GS USE ONLY**

**GS Case#** \_\_\_\_\_ **Trac#:** \_\_\_\_\_ **Date Acknowledged:** / /2007 **Date Distributed:** / /2007 **Sent to:** \_\_\_\_\_

**A 2-hour minimum charge applies to each request for an estimate.**

**EXHIBIT A  
Attachment II**



Date:		Pages: 1
To:	From:	
Co:	Co: GenSource	
Fax:	Fax: (661) 294-1310	

***AUTHORIZATION FOR BILLABLE SERVICES***

**GS Product involved:** \_\_\_\_\_  
**Description of Project:** \_\_\_\_\_

**Case#:** \_\_\_\_\_ **Track#:** \_\_\_\_\_ **Project#:** \_\_\_\_\_

**Additional Information Attached?** ☐ Yes / ☐ No **Quote prepared by:** \_\_\_\_\_

**Estimated Hours:** \_\_\_\_\_

**Estimated Completion Date:** \_\_\_\_\_

**Required Deposit:** \_\_\_\_\_

**AUTHORIZATION.** You hereby agree to pay GS to proceed with the Project outlined above on a time and materials basis up to the amount of the budget set forth above (or any increase approved by you). GS will promptly notify you if it believes that this Project will not be completed within the estimated time or budget. You may terminate the Project at any time by written notice to GS, and will be liable only for the costs incurred to that date or reasonably necessary to terminate this Project.

**PAYMENT TERMS:** GS time on this Project will be billed at the contractual rate. Payment of all bills (generally monthly) not covered by a deposit is due within 30 days after the invoice date. GS may require payment of third party costs before ordering third party materials or services.

**OWNERSHIP.** In order to reduce customization costs, GS uses good faith efforts to use its existing software to complete this Project. Accordingly, GS must own all rights to all of the results, products and proceeds of this Project. You will have a license to any software incorporated into your system on the same terms as the underlying GS product, and will treat all GS software in accordance with its status as proprietary copyrighted material.

**SOFTWARE RISKS.** GS will use its professional efforts in this Project, but does not warrant that its software (including as modified in this Project) will meet your requirements or that the operation of its software will be uninterrupted or error-free.

**EXHIBIT A**  
**Attachment II**

**EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN A WRITTEN AGREEMENT SIGNED BY GS, ALL SOFTWARE IS PROVIDED BY GS "AS IS," WITHOUT ADDITIONAL WARRANTY OF ANY KIND, AND EXCEPT AS NOTED HEREIN, GS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. No oral or written information or advice given by GS or its representatives shall create any warranty with regard to any software or in any way increase the scope of this warranty.**

**GENERAL.** This Authorization is valid for 60 days and constitutes the entire agreement between the parties with respect to the Project and supersedes all prior or contemporaneous understandings, written or oral, and any contrary terms in any related purchase order. This Authorization shall be governed by California laws, without giving effect to choice of law rules and may only be modified in a written document signed by the parties. Any proceeding related to the Project must be brought in courts located in Orange COUNTY, California. The prevailing party in any dispute shall be entitled to its court costs and reasonable attorneys' fees.

In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to the Exhibits.

By signing below, you hereby authorize the above work and indicate your agreement to the terms stated above.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Company: \_\_\_\_\_ Telephone: \_\_\_\_\_ Date: \_\_/\_\_/2007

Request cancelled by: \_\_\_\_\_ Date: \_\_/\_\_/2007

Final COUNTY Acceptance: \_\_\_\_\_ Date: \_\_\_\_\_



## PRICING SCHEDULE

GCFW/GENRS/ASP IMPLEMENTATION COSTS	\$154,000 One Time Cost
<p><b>GCFW – Workers' Compensation Information Systems Services</b>  <b>ASP Installation – 300 Users</b></p> <p>Installation and Configuration of GCFW</p> <ul style="list-style-type: none"> <li>• Requirements Analysis for Initial Implementation</li> <li>• Set-up of 'CONFIG' (table driven system options)</li> <li>• Set-up of Hosted Hardware, OS, and DBMS configuration</li> <li>• Set-up of Bill Review Interface (BRVI)</li> <li>• Client enhancement and interfaces will be configured in ASP set up</li> <li>• GenRate.net integration</li> </ul> <p>Third Party Products</p> <ul style="list-style-type: none"> <li>• English Wizard Reporting Software</li> <li>• InfoMaker – Report Generator</li> <li>• IBM Database</li> <li>• SQL Server 2005</li> </ul> <p>GenSource Hosted Hardware (Configuration, Migration and Upload)</p> <ul style="list-style-type: none"> <li>• Database Server and Application Server</li> </ul> <p>GCFW Windows Training (5 days)</p> <ul style="list-style-type: none"> <li>• Additional training will be at \$400 inclusive per day.</li> </ul> <p>Data WareHouse Training (2 days)</p>	
BASIC MONTHLY MAINTENANCE AND SUPPORT	\$240,000/Year
<p><b>ASP Subscription Fee – GCFW</b></p> <ul style="list-style-type: none"> <li>• Fees subsidize numerous ongoing costs including Software Licenses, administrative support services, third party maintenance costs, bi-annual upgrades of the database and application software, and computer hardware and overhead costs.</li> <li>• Monthly maintenance fees begin the first of the month after going "live".</li> </ul> <p><b>Additional Software Licenses</b></p> <ul style="list-style-type: none"> <li>• Additional users may be added at the costs of \$100 per user per month added to the existing monthly ASP subscription fee.</li> <li>• If exceed 700 user accounts, then an additional charge of \$6.80 per user per month shall be applied for Microsoft SPLA.</li> </ul>	
ELECTRONIC TRANSFER (FROI/SROI STATE REPORTING)	\$103,500/YEAR
<p>Subcontractor: HealthTech</p> <p>EDI Software and GenSource Interface</p> <p>Transaction and Maintenance Fees for all States mandating electronic data submission:</p> <ul style="list-style-type: none"> <li>• EDI to and from the jurisdiction</li> <li>• First Report of Injury and/or Subsequent Reports of Injury (e.g., ANSI 148 &amp; 149)</li> <li>• Acknowledgement (e.g., ANSI 824) and Error Reporting</li> </ul> <p>Annual volume of expected transmissions: &gt;150,000</p> <p>Rate guaranteed not to exceed \$103,500 annually for contract years 1 through 3 unless statutory reporting requirements are changed; for option years 4 and 5, rate will be subject to mutually agreeable inflation adjustments or upon changes in statutory reporting requirements</p>	

## EXHIBIT B

### USER TRAINING

\$20,000/YEAR

- Travel Costs shall not exceed the actual cost of transportation by public carrier. Lodging costs shall not exceed \$174.00 per night, unless authorized by COUNTY.
- CONTRACTOR shall charge no more than \$2000.00 inclusive per day for up to five (5) students per training provided pursuant to Section 12.0 of the Statement of Work.

CUSTOMIZATION COSTS (HOURLY RATE)										
Service	March 1, 2007 through June 30, 2008		July 1, 2008 through June 30, 2009		July 1, 2009 through June 30, 2010		July 1, 2010 through June 30, 2011		July 1, 2011 through June 30, 2012	
	Regular	Rush/ Offshift	Regular	Rush/ Offshift	Regular	Rush/ Offshift	Regular	Rush/ Offshift	Regular	Rush/ Offshift
Application Services										
Consulting	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Training (over the phone)	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Documentation	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Programming Services										
Analysis	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
New Product Installation	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Customization	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75
Data Recovery Services	\$225.00	\$500.00	\$236.25	\$525.00	\$248.06	\$551.25	\$260.46	\$578.81	\$273.48	\$607.75

## CIO ANALYSIS

### RECOMMENDATION TO APPROVE A SOLE SOURCE CONTRACT FOR WORKERS' COMPENSATION CLAIM ADMINISTRATION SYSTEM MAINTENANCE AND HOSTING SERVICES

CIO RECOMMENDATION: ☒ APPROVE ☐ APPROVE WITH MODIFICATION  
☐ DISAPPROVE

**Contract Type:**

☒ New Contract ☐ Contract Amendment ☐ Contract Extension  
☐ Sole Source Contract ☐ Hardware Acquisition ☐ Other

New/Revised Contract Term: Base Term: 3 Yrs.

# of Option years: 3 one year terms

**Contract Components:**

☒ Software ☐ Hardware ☐ Telecommunications  
☒ Professional Services

Project Executive Sponsor William T Fujioka, Chief Executive Officer, CEO

**Budget Information :**

Y-T-D Contract Expenditures	\$0
Requested Contract Amount	\$2,885,232
Aggregate Contract Amount	\$2,885,232

**Project Background:**

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project legislatively mandated? The State of California requires that workers' compensation claim services are to be provided to County employees.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this project subvented? If yes, what percentage is offset?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project/application applicable to (shared use or interfaced) other departments? If yes, name the other department(s) involved. The Workers' Compensation Solution is an enterprise solution and available to all County Departments.

**Strategic Alignment:**

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project in alignment with the County of Los Angeles Strategic Plan? The Department's Workers' Compensation Solution supports County Strategic Plan Goal #1 (Organizational Effectiveness) by ensuring continuous and effective services delivery systems.

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project consistent with the currently approved Department Business Automation Plan? The project is identified in the Department's FY 2011-12 Business Automation Plan.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does the project's technology solution comply with County of Los Angeles IT Directions Document? The Department's Workers' Compensation Solution complies with IT Directions document by conducting government electronically to improve the delivery of services.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does the project technology solution comply with preferred County of Los Angeles IT Standards? The Department's Workers' Compensation Solution as a hosted system complies with applicable IT Standards.

**Project/Contract Description:**

The Chief Executive Office (CEO) is seeking Board approval for a sole source Contract with P&C Claims, Inc. (P&C) for a hosted software solution for administration and management of workers' compensation claims. The Contract's maximum contract sum is \$2,885,232 with a base term of three (3) years with three (3) one-year options. The Contract will provide services to:

- The County's four Third Party Administrators for claims administration of 10,500 new workers' compensation claims annually and 24,000 open claims; and
- County employees to process, monitor, and report on the workers' compensation claims.

**Background:**

This Contract is a continuation of services provided under Contract 76027 approved by your Board on February 13, 2007 with GenSource Corporation (GenSource) now P&C. Prior to Contract 76027, GenSource workers' compensation claim administration, hosting services, software licenses, and maintenance services were obtained through purchase orders contracts processed under the authority of the Internal Services Department.

**Project Justification/Benefits:**

P&C has provided consistent and reliable workers' compensation claim services to the County since 1985. Approval of this Contract provides continuation of services and an upgrade of the existing system to P&C's latest system. CEO's Risk Management Administration is developing a comprehensive enterprise information technology (IT) strategy to support all of its risk management programs.

**Project Metrics:**

The Contract identifies service levels and system performance metrics to be provided by the Contractor for the Contract term. It also specifies that data ownership remains with the County.

**Impact on Service Delivery or Department Operations, if Proposal is Not Approved:**

If the Contract is not approved, the Contractor's workers' compensation claim administrative services will expire February 28, 2012.

**Alternatives Considered:**

Based on the current time line and the development of a comprehensive enterprise IT strategy by the Risk Management Administration, acquiring and implementing a new workers' compensation administration solution would not be feasible.

**Project Risks:**

The CEO Risk Management Administration mitigates the hosting and performance risks by utilizing the service levels and system performance metrics specified in the Contract, as well as providing executive sponsorship, stable project staffing with clear roles and responsibilities. The County's Chief Information Security Officer reviewed the Amendment and requested that a "security breach and notification" paragraph be added to the Contract. CIO will continue to work with P&C Claims to ensure that sensitive data is encrypted.

**Risk Mitigation Measures:**

The CEO Risk Group utilizes the risk mitigation measures described above and will continue to monitor these risks throughout the Contract.

**Financial Analysis:**

The maximum contract sum for the 3 year base term is \$1,519,684 with \$483,288 for the first one-year option year term; \$438,484 for the second one-year option year term; \$443,776 for the first one-year option year term. The total for the 3 one-year options is \$1,365,548.

The total cost of the Contract is \$2,885,232 with each of the service component costs for the Contract delineated in the Table below:

Maintenance and Support Services Base Term	\$749,184
State Mandated EDI Data Transmission Services	\$310,500
Training Services	\$60,000
Upgrade Services	\$300,000
Optional Services	\$100,000
<b>Total Base Services</b>	<b>\$1,519,684</b>

Maintenance and Support Services Total Options	\$795,048
State Mandated EDI Data Transmission Services	\$310,500
Training Services	\$60,000
Optional Services	\$200,000
<b>Total Optional Services</b>	<b>\$1,365,548</b>

The total funding of \$2,885,232 for this Contract is provided by the Workers' Compensation Trust Fund.

**CIO Concerns:**

None.

**CIO Recommendations:**

Based on current needs of this system by the CEO's Risk Management Administration, my Office supports the action stated above and recommends approval by the Board.

**CIO APPROVAL**

Date Received: February 14, 2012

Prepared by: James Hall

Date: February 14, 2012

Approved: 

Date: 2-14-12

## SOLE SOURCE CHECKLIST

Check (√)	<b>JUSTIFICATION FOR SOLE SOURCE CONTRACTS</b> Identify applicable justification and provide documentation for each checked item.
	➤ Only one bona fide source for the service exists; performance and price competition are not available.
	➤ Quick action is required (emergency situation).
	➤ Proposals have been solicited but no satisfactory proposals were received.
	➤ Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.
	➤ Maintenance service agreements exist on equipment which must be serviced by the authorized manufacturer's service representatives.
	➤ It is most cost-effective to obtain services by exercising an option under an existing contract.
✓	➤ It is in the best interest of the County e.g., administrative cost savings, excessive learning curve for a new service provider, etc.
	➤ Other reason. Please explain:
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div data-bbox="269 1522 928 1585">_____ Deputy Chief Executive Officer, CEO</div> <div data-bbox="928 1522 1334 1585">_____ Date</div> </div>	



**SOLE SOURCE JUSTIFICATION  
FOR  
WORKERS' COMPENSATION CLAIMS ADMINISTRATION  
SYSTEM AND HOSTING SERVICES CONTRACT**

- ✓ This sole source contract is fiscally responsible. Chief Executive Office (CEO) staff evaluated the 5-year cost of converting, migrating, and maintaining a new Workers' Compensation Claims Administration and Information System (WCCAIS), and estimated the total cost to be \$4,000,000 - \$4,750,000. The evaluation utilized the WCCAIS transition costs of a large public agency and applied County of Los Angeles (County) requirements to those costs. Supporting documentation is available for review. The CEO staff estimates the maximum 5-year cost of the proposed contract to be \$2,291,456. That cost includes conversion and migration to a Microsoft.NET framework product. Should the County elect not to migrate to a new platform, the estimated 5-year cost would be \$1,850,000.
- ✓ This sole source contract maximizes operational effectiveness by allowing the uninterrupted provision of mandatory workers' compensation benefits and ensures mandatory Federal and State reporting compliance. In addition, the proposed move to a new framework can be completed and tested with no system down time and no duplication of cost.
- ✓ Current resource limitations in the CEO Risk Management Branch (RMB) and CEO Information Technology Services (ITS) will hamper the ability to guarantee multiple WCCAIS interfaces are operational.
- ✓ Current resource limitations in CEO RMB and CEO ITS will constrain training availability. Such training is critical when moving to a completely new WCCAIS and will be required for 300 users. The user groups will have different needs and require different training.
- ✓ The conversion and migration from one P&C Claims, Inc., product to another will limit cost, down time, and uncertainties inherent in large information technology migrations. In addition, CEO ITS believes that upgrading to a ".NET" framework will ease transitioning to a comparative product in the future.



**CONTRACT**

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES**

**AND**

**P & C CLAIMS, INCORPORATED**

**FOR**

**SOFTWARE MAINTENANCE AND**

**APPLICATION HOSTING SERVICES**

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**CONTRACT BETWEEN  
COUNTY OF LOS ANGELES  
AND  
P&C CLAIMS, INC. FOR  
SOFTWARE MAINTENANCE AND APPLICATION HOSTING SERVICES**

This Contract and Exhibits is made and entered into as of February 28, 2012, by and between the County of Los Angeles, hereinafter referred to as County and P&C Claims, Incorporated, a Delaware corporation, hereinafter referred to as Contractor.

**RECITALS**

**WHEREAS**, the Board approved Contract No. 76027, a sole source contract, effective March 1, 2007, with GenSource Corporation, a division of StrataCare, Inc. for software maintenance and application hosting services (collectively, "Services") for a workers' compensation claims administration system (the "System") for the processing and administration of workers compensation claims;

**WHEREAS**, the assets of GenSource, a division of StrataCare, Inc. were acquired by Contractor and Contract No. 76027 was assigned from GenSource to Contractor effective as of December 31, 2009;

**WHEREAS**, the System was designed for County use and subsequent appropriate modifications were made to meet County's requirements;

**WHEREAS**, Contract No. 76027 will expire on February 29, 2012;

**WHEREAS**, the County is assessing its future System needs and requirements in relation to all of its existing automated claims systems;

**WHEREAS**, final determination for future system(s) is not expected to be finalized until after Contract 76027 expires;

**WHEREAS**, until a final determination is made, the County has determined that maintaining the current System is more cost effective than implementing a new system;

**WHEREAS**, the County is satisfied with the System and Services provided by Contractor, and Contractor is willing to continue to provide the Services;

**WHEREAS**, the County has determined that the Services are of a technical nature and is unable to recruit qualified personnel with the requisite training, knowledge, or experience to perform the Services; and

**WHEREAS**, this Contract is authorized under California Government Code Section 31000, which authorizes the Board of Supervisors to contract for special services.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

## **1.0 APPLICABLE DOCUMENTS**

Exhibits A, B, C, D, E, F, G, H, I, and J are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to the Exhibits according to the following priority:

- EXHIBIT A - Statement of Work
- EXHIBIT B - Payment Schedule
- EXHIBIT C - Contractor's EEO Certification
- EXHIBIT D - County's Administration
- EXHIBIT E - Contractor's Administration
- EXHIBIT F - Contractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement
- EXHIBIT G - Jury Service Agreement
- EXHIBIT H - Escrow Agreement
- EXHIBIT I - Safely Surrendered Baby Law
- EXHIBIT J - Contractor's Obligation as a "Business Associate" Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)

This Contract and the Exhibits hereto constitute the complete and exclusive statement of understanding between the parties, and supersedes all previous Contracts, written and oral, and all communications between the parties relating to the subject matter of this Contract. No change to this Contract shall be valid unless prepared pursuant to Subparagraph 8.4 (Change Notices and Amendments) and signed by both parties.

## **2.0 DEFINITIONS**

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 **Acceptance:** As used herein, "Acceptance" shall mean County's written approval of any tasks, subtasks, deliverables, goods, services or other



work provided by Contractor to County, consistent with the requirements of Exhibit A (Statement of Work).

- 2.2 **Confidential Information:** As used herein, "Confidential Information" shall mean any data or information, in any format, and includes sensitive financial information, any County data, and any other information otherwise deemed confidential by County or by applicable Federal, State or local law.
- 2.3 **Contract:** As used herein, "Contract" shall mean the agreement executed between the County and Contractor that sets forth the terms and conditions for the issuance and performance of Exhibit A (Statement of Work).
- 2.4 **Contractor:** As used herein, "Contractor" shall have the meaning set forth in the Preamble.
- 2.5 **Contractor Project Manager:** As used herein, "Contractor Project Manager" shall have the meaning specified in Subparagraph 7.1 (Contractor Project Manager).
- 2.6 **County Contract Administrator:** As used herein, "County Contract Administrator" shall have the meaning specified in Subparagraph 6.1 (County Contract Administrator).
- 2.7 **County Project Director:** As used herein, "County Project Director" shall have the meaning specified in Subparagraph 6.2 (County Project Director).
- 2.8 **County Project Manager:** As used herein, "County Project Manager" shall have the meaning specified in Subparagraph 6.3 (County Project Manager).
- 2.9 **Day(s):** As used herein, whether singular or plural, "Day(s)" shall mean calendar day(s) unless otherwise specified.
- 2.10 **Deficiency(ies):** As used herein, whether singular or plural, "Deficiency(ies)" shall mean and include defect(s) in design, development, programming, implementation, materials, or workmanship; error(s); omission(s); deviation(s) from published or mutually agreed upon standards, from any of the Specifications, or from any County-approved Deliverables; or other problem(s) which result in the System not performing in accordance with the provisions of this Contract, including, without limitation, the Specifications.

- 2.11 **Deliverable(s):** As used herein, "Deliverable(s)" shall mean any task, subtask, item, and/or a service or other consideration to be provided by Contractor under this Contract.
- 2.12 **Department Head:** As used herein, "Department Head" shall mean the Chief Executive Officer (CEO) of the County of Los Angeles.
- 2.13 **Documentation:** As used herein, "Documentation" shall mean any and all written and electronic materials provided or made available by Contractor under this Contract, including, but not limited to, documentation relating to software specifications and functions, training course materials, Specifications including System requirements, technical manuals, handbooks, flow charts, technical information reference materials, user manuals, operating manuals, quick reference guides, FAQs, and all other instructions and reference materials relating to the capabilities, operation, installation and use of the System and/or applicable components.
- 2.14 **Effective Date:** As used herein, "Effective Date" shall mean the date of execution of this Contract by County and the authorized representative(s) of the Contractor.
- 2.15 **Fiscal Year:** As used herein, "Fiscal Year" shall mean the twelve (12) month period beginning July 1<sup>st</sup> and ending the following June 30<sup>th</sup>.
- 2.16 **Maintenance Fees:** As used herein, "Maintenance Fees" shall mean the applicable fees to be paid by County to Contractor for System Maintenance pursuant to Exhibit B (Payment Schedule) and shall include any or all of the following: application software maintenance, administrative support services, backups, recovery, software licenses, computer hardware and overhead costs and third party software maintenance.
- 2.17 **Optional Work:** As used herein, "Optional Work" shall mean software enhancements and/or professional services, which may be provided by Contractor upon County's request and approval in accordance with Task 3 (General Customizations) of Exhibit A (Statement of Work).
- 2.18 **Source Code:** As used herein, "Source Code" shall mean the source code for the application software, to the extent available, developed for or licensed to County under this Contract by Contractor, including core application and application modifications, together with Documentation and other proprietary information related to such source code.
- 2.19 **Specifications:** As used herein, "Specifications" shall mean the functional application program specifications set forth in Exhibit A (Statement of Work).

- 2.20 **System:** As used herein, "System" shall mean all software, hardware, third party software, conversion, interfaces, databases and services described in this Contract and as otherwise agreed to in writing by Contractor and County pursuant to Subparagraph 8.4 (Change Notices and Amendments) collectively comprising the workers' compensation claims administration system. Reference to the System may include one or more components or modules thereof or the entire System.
- 2.21 **System Maintenance:** As used herein, "System Maintenance" shall mean the services specified in Subparagraph 3.1.1.
- 2.22 **Transition License:** As used herein, "Transition License" shall mean the license to the application software granted by Contractor following termination or expiration of this Contract.
- 2.23 **Transition Period:** As used herein, "Transition Period" shall mean the period up to two (2) years after the termination or expiration of this Contract in which the Contractor shall grant to County license to the application software and Work product
- 2.24 **User:** As used herein, "User" shall mean any person or entity authorized by County to access or use the System or a System component.
- 2.25 **Weekday Minimum Maintenance Period:** As used herein, "Weekday Minimum Maintenance Period" shall mean the period between the hours of 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday excluding the holidays observed by Contractor. Contractor will provide a list of holidays by November 1<sup>st</sup>, for the next calendar year.
- 2.26 **Work:** As used herein, "Work" shall mean any and all tasks, subtasks, deliverables, goods, services and other work provided, or to be provided, by or on behalf of Contractor pursuant to this Contract, including System components, System implementation services, System Maintenance and Optional Work.
- 2.27 **Work Order:** As used herein, "Work Order" shall mean the terms of any Optional Work agreed to by County and Contractor. Such Work Order shall include the statement of work, procedures to be used by Contractor to fulfill work requirements, and the cost. Work Orders shall be paid from the annual Contingency Fund that is specified in Exhibit B (Payment Schedule).

### 3.0 WORK

- 3.1 Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time all tasks, deliverables, goods, services, and other work as set forth in Exhibit A (Statement of Work).

#### 3.1.1 System Maintenance

Contractor shall provide to County services relating to the maintenance and support of the System, including System maintenance and support services throughout the term of this Contract.

Upon termination or expiration of this Contract, Contractor shall provide to County a no cost Transition License during the Transition Period.

#### 3.1.2 Hosting Services

Contractor shall provide a secure and efficient environment to house County's workers compensation administration application and database. Contractor shall:

1. Provide dedicated database server(s) for County use only, not shared with other Contractor clients; and
2. Provide adequate data storage to accommodate County's current and future needs.

#### 3.1.3 Optional Work

Upon County's request and mutual approval pursuant to the terms of this Contract, Contractor shall provide Optional Work, including software enhancements, consisting of additional software and/or Customizations in the form of solution modifications and additional interfaces, and professional services, consisting of consulting services and/or additional training at the applicable hourly rates set forth in Exhibit B (Payment Schedule). Such Optional Work shall be accomplished by means of a Work Order.

- 3.2 If the Contractor provides any tasks, deliverables, goods, services, or other work, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

#### **4.0 TERM OF CONTRACT**

- 4.1 The term of this Contract shall commence on March 1, 2012 and shall expire three (3) years thereafter, unless sooner terminated or extended, in whole or in part, as provided in this Contract.
- 4.2 The County shall have the sole option to extend this Contract term for up to three (3) additional one-year periods, for a maximum Contract term of six (6) years. Each such option and extension shall be exercised at the sole discretion of the CEO or his designee, subject to Subparagraph 8.4 (Change Notices and Amendments) of this Contract.

The County maintains databases that track/monitor Contractor performance history. Information entered into such databases may be used for a variety of purposes, including determining whether the County will exercise a Contract term extension option.

- 4.3 The Contractor shall notify County when this Contract is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, the Contractor shall send written notification to the County at the address provided in Exhibit D (County's Administration).

#### **5.0 CONTRACT SUM**

- 5.1 The maximum Contract sum under the terms of this Contract shall be the total monetary amount payable by County to Contractor for the provision of Services specified herein in accordance with Exhibit B (Payment Schedule) of this Contract. For the base term of the Contract, the period March 1, 2012 through February 28, 2015, the maximum Contract sum shall be \$1,519,684. If County exercises the option years, the costs shall be as set forth in Exhibit B (Payment Schedule) of this Contract.
- 5.2 The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of the same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall only occur with the County's express prior written approval.
- 5.3 The Contractor shall maintain a system of record keeping that will allow the Contractor to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of this event, the Contractor shall send written notification to

the County at the address herein provided in Exhibit D (County's Administration).

**5.4 No Payment for Services Provided Following Expiration/Termination of Contract**

The Contractor shall have no claim against the County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Contract. Should the Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such payment from the Contractor. This provision shall survive the expiration or other termination of this Contract.

**5.5 Invoices and Payments**

- 5.5.1 Contractor shall invoice County only for providing the tasks, deliverables, goods, services, and other work specified in Exhibit A (Statement of Work) and elsewhere hereunder. Contractor shall prepare the invoices, which shall include the charges owed to the Contractor by County under the terms of this Contract. Contractor's payments shall be as provided in Exhibit B (Payment Schedule), and the Contractor shall be paid only for the tasks, deliverables, goods, services, and other work approved in writing by the County. If County does not approve work in writing, no payment will be due to the Contractor for that work.
- 5.5.2 Contractor's invoices shall be priced in accordance with Exhibit B (Payment Schedule).
- 5.5.3 The Contractor's invoices shall contain the information set forth in Exhibit A (Statement of Work) describing the tasks, deliverables, goods, services, work hours and facility and/or other work for which payment is claimed.
- 5.5.4 Contractor shall submit the monthly invoices to County by the fifteenth (15<sup>th</sup>) calendar day of the month following the month of service.
- 5.5.5 All invoices under this Contract shall be submitted in duplicate to the County Project Manager.
- 5.5.6 All invoices submitted by the Contractor for payment shall have the written approval of the County Project Director or designee

prior to any payment thereof. In no event shall County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld, and in no instance will such approval take more than thirty (30) days from receipt of properly prepared invoices by County.

5.5.7 If this Contract is terminated by County for default pursuant to Subparagraph 8.42 (Termination for Default), then, without excusing such default, and without prejudice to any other rights of County in this Contract or as provided by law, Contractor shall be entitled to receive payment for all work performed prior to the termination date and approved by County.

5.5.8 If termination by County for default is a result of failure by Contractor to achieve Deliverables as thereafter determined by County, as set forth in Exhibit A (Statement of Work), and such failure is not caused by an unreasonable delay or unreasonable lack of cooperation by County, then County shall be obligated to Contractor for the sums related to work performed and approved by County. The County's license to use the System shall remain in effect following the termination of this Contract.

5.6 Notwithstanding any other provision of this Contract, and in addition to the provisions of Subparagraph 5.5 (Invoices and Payments) and Attachment I (Performance Standards Requirements and Service Level Agreement) of Exhibit A (Statement of Work), and to any rights of County given by law or provided in this Contract, County may upon written notice to Contractor may withhold payment for any Deliverable or other services while Contractor is in default hereunder, or at any time that Contractor has not provided a County-approved Deliverable. This provision shall not be deemed to impair any claims that Contractor may have against County or Contractor's rights to assert such claims pursuant to Subparagraph 8.52 (Dispute Resolution Procedure), provided that such default or non-delivery is not caused by an unreasonable delay or unreasonable lack of cooperation by County.

## **6.0 ADMINISTRATION OF CONTRACT – COUNTY**

A listing of all County Administration referenced herein is shown in Exhibit D (County's Administration). County shall notify Contractor in writing (which may be in the form of email) of any change in the names or addresses shown.

### **6.1 County Contract Administrator**

Responsibilities of the County Contract Administrator shall include:

6.1.1 Making changes in the terms and conditions of this Contract in accordance with Subparagraph 8.4 (Change Notices and Amendments); and

6.1.2 Providing direction to Contractor in the areas relating to County policy, information requirements and procedural requirements.

**6.2 County Project Director**

Responsibilities of the County Project Director shall include:

6.2.1 Authoring and approving any and all Work Orders and invoices and ensuring that all required components are delivered by Contractor;

6.2.2 Providing directions to Contractor on all business assessment needs;

6.2.3 Ensuring that the objectives of this Contract are met.

The County Project Director is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever.

**6.3 County Project Manager**

Responsibilities of the County Project Manager shall include:

6.3.1 Overseeing the day-to-day administration of this Contract;

6.3.2 Meeting with Contractor Project Manager on a regular basis;

6.3.3 Inspecting any and all tasks, deliverables, goods services, or other work provided by or on behalf of Contractor.

The County Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever.

**7.0 ADMINISTRATION OF CONTRACT – CONTRACTOR**

**7.1 Contractor Project Manager**

7.1.1 The Contractor Project Manager is designated in Exhibit E (Contractor's Administration). Contractor shall notify County in



writing of any change in the name or address of the Contractor Project Manager.

- 7.1.2 The Contractor Project Manager shall be responsible for the Contractor's day-to-day activities as related to this Contract and shall coordinate with the County Project Manager on a regular basis.

## **7.2 Background and Security Investigations**

- 7.2.1 Contractor staff performing work under this Contract shall undergo and pass a background investigation to the satisfaction of County as a condition of beginning and continuing to perform services under this Contract. Such background investigation may include, but shall not be limited to, criminal conviction information obtained through fingerprints submitted to the California Department of Justice. The fees associated with the background investigation shall be at the expense of the Contractor, regardless if the member of Contractor's staff passes or fails the background investigation. No person employed by the Contractor and assigned to the County shall have a high-grade misdemeanor and/or misdemeanor theft conviction or any felony convictions. Contractor shall be under a continuing obligation to disclose any subsequent criminal record information to the County and to remove an employee who in the future incurs such record from performing work under this Contract at County's request.
- 7.2.2 If a member of Contractor's staff does not pass the background investigation, County may request that the member of Contractor's staff be immediately removed from performing services under the Contract at any time during the term of the Contract.
- 7.2.3 County retains the right to conduct its own background investigation of Contractor staff performing work under this Contract at County's sole cost. County will not provide to Contractor's staff any information obtained through County's background investigation.
- 7.2.4 County, in its sole discretion, may immediately deny or terminate facility access to any member of Contractor's staff that does not pass such investigation to the satisfaction of the County or whose background or conduct is incompatible with County facility access.

- 7.2.5 Disqualification of any member of Contractor's staff pursuant to this Subparagraph 7.2 shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.

**7.3 Confidentiality**

- 7.3.1 Contractor shall maintain the confidentiality of all records and information in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.
- 7.3.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with this Subparagraph 7.3, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Subparagraph 7.3 shall be conducted by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of County without County's prior written approval.
- 7.3.3 Contractor shall inform all of its officers, employees, agents and subcontractor providing services hereunder of the confidentiality provisions of this Contract.
- 7.3.4 Contractor shall cause each employee providing services covered by this Contract to sign and adhere to the provisions of Exhibit F ("Contractor Employee Acknowledgment, Confidentiality, and Copyright Assignment Agreement").

- 7.3.5 Contractor shall cause each non-employee providing services covered by this Contract to sign and adhere to the provisions of Exhibit F-1 ("Contractor Non-Employee Acknowledgment, Confidentiality, and Copyright Assignment Agreement").

## **8.0 STANDARD TERMS AND CONDITIONS**

### **8.1 Assignment and Delegation**

- 8.1.1 The Contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. Notwithstanding the foregoing, a merger by Contractor with or the sale of all or substantially all of Contractor's assets to a third party shall not constitute an assignment, provided that the third party agrees in writing that it shall be bound by all of the terms and conditions of this Contract (a "Permitted Transfer"). For purposes of this Paragraph, County consent shall require a written amendment to the Contract, which is formally approved and executed by the parties. Any payments by County to any approved delegate or assignee on any claim under this Contract shall be deductible, at County's sole discretion, against the claims, which Contractor may have against the County.
- 8.1.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event of any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Contract, except that this provision shall not apply to a Permitted Transfer.
- 8.1.3 Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of the same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of this Contract which may result in the termination of the Contract. In the event of such

termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

**8.2 Authorization Warranty**

The Contractor represents and warrants that the person executing this Contract for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, conditions, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.

**8.3 Budget Reductions**

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County Contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the services to be provided by the Contractor under this Contract shall also be reduced correspondingly. The County's notice to the Contractor regarding said reduction in payment obligations shall be provided within thirty (30) calendar days of the Board's approval of such actions. The Contractor shall have thirty (30) calendar days after receipt of such notice within which to terminate this Contract and receive payment for all work performed by Contractor and approved by County prior to the termination date. Except as set forth in the preceding sentence, the Contractor shall continue to provide all of the services set forth in this Contract.

**8.4 Change Notices and Amendments**

No representative of either County or Contractor, including those named in this Contract, is authorized to make any changes in any of the terms, obligations, or conditions of this Contract, except through the procedures set forth in this Subparagraph 8.4. County reserves the right to change any portion of the Work required under this Contract and to any other provisions of this Contract. All such changes shall be accomplished only as provided in this Subparagraph 8.4.

**8.4.1 Change Notices**

For any change requested by County which does not materially affect the scope of Work, term, payments, or any term or condition of the Contract, including expenditure of Contingency

Fund, a written notice of such change ("Change Notice") shall be prepared and signed by the Contractor and the County Contract Administrator. All such changes must be approved in advance by the parties.

#### 8.4.2 Amendments

1. For any change which affects the scope of work, term, Contract Sum, payments, or any term or condition included under this Contract, a negotiated Amendment shall be prepared and approved by the County's Board of Supervisors and executed by authorized representatives of the County and the Contractor.
2. The County's Board of Supervisors or CEO or designee may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County reserves the right to add and/or change such provisions as required by the Board of Supervisors or CEO. To implement such changes, an Amendment to the Contract shall be prepared and executed by the Contractor and the CEO or his designee.
3. The CEO or his designee may at his sole discretion, authorize extensions of time as defined in Paragraph 4.0 (Term of Contract). The Contractor agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such extensions. To implement an extension of time, an Amendment to the Contract shall be prepared and executed by the Contractor and CEO.

#### 8.5 Complaints

The Contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints.

- 8.5.1 Within ten (10) business days after Contract Effective Date, the Contractor shall provide the County with the Contractor's policy for receiving, investigating and responding to user complaints.
- 8.5.2 The County will review the Contractor's policy and provide the Contractor with approval of said plan or with requested changes.
- 8.5.3 If the County requests changes in the Contractor's policy, the Contractor shall make such changes and resubmit the plan within five (5) business days for County approval.

- 8.5.4 If, at any time, the Contractor wishes to change the Contractor's policy, the Contractor shall submit proposed changes to the County for approval before implementation.
- 8.5.5 The Contractor shall preliminarily investigate all complaints and notify the County Project Manager of the status of the investigation within five (5) business days of receiving the complaint.
- 8.5.6 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.
- 8.5.7 Copies of all written responses shall be sent to the County Project Manager and County Project Director within three (3) business days of mailing to the complainant.

**8.6 Compliance with Applicable Law**

- 8.6.1 In the performance of this Contract, Contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.
- 8.6.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Subparagraph 8.6 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in

doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

**8.7 Compliance with Civil Rights Laws**

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, USC Sections 2000(e)(1) through 2000(e)(17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Contractor shall comply with Exhibit C (Contractor's EEO Certification).

**8.8 Compliance with the County's Jury Service Program**

**8.8.1 Jury Service Program:**

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County code, a copy of which is attached as Exhibit G and incorporated by reference into and made a part of this Contract.

**8.8.2 Written Employee Jury Service Policy**

1. Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five (5) days of regular pay for actual jury services. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.
2. For purposes of this Paragraph, "Contractor" means a person, partnership, corporation or other entity which has a

contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Contractor. "Full-time" means forty (40) hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of ninety (90) days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Contractor uses any subcontractor to perform services for the County under the Contract, the subcontractor shall also be subject to the provisions of this Paragraph. The provisions of this Paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

3. If the Contractor is not required to comply with the Jury Service program when the Contract commences, the Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Contractor shall immediately notify the County if the Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if the Contractor no longer qualifies for an exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that the Contractor demonstrate, to the County's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the Contractor continues to qualify for an exception to the program.
4. Contractor's violation of this Subparagraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.



**8.9 Conflict of Interest**

8.9.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work

8.9.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be a material breach of this Contract.

**8.10 Consideration of Hiring County Employees Targeted for Layoff/Or Re-Employment List**

Should the Contractor require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

**8.11 Consideration of Hiring GAIN/GROW Program Participants**

8.11.1 Should the Contractor require additional or replacement personnel after the effective date of this Contract, the Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For

this purpose, consideration shall mean that the Contractor will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Contractor.

- 8.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

## **8.12 Contractor Responsibility and Debarment**

### **8.12.1 Responsible Contractor**

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Contractors.

### **8.12.2 Chapter 2.202 of the County Code**

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five (5) years but may exceed five (5) years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the Contractor may have with the County.

### **8.12.3 Non-responsible Contractor**

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

#### 8.12.4 Contractor Hearing Board

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the

Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

#### 8.12.5 Subcontractors of Contractor

These terms shall also apply to subcontractors of County Contractors.

#### 8.13 **Contractor's Acknowledgment of County's Commitment to the Safely Surrendered Baby Law**

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the internet at [www.babysafela.org](http://www.babysafela.org).

**8.14 Contractor's Warranty of Adherence to County's Child Support Compliance Program**

8.14.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

8.14.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**8.15 County's Quality Assurance Plan**

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors.

The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

**8.16 Damage to County Facilities, Buildings or Grounds**

8.16.1 The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after the

Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

- 8.16.2 If the Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by the County, for such repairs shall be repaid by the Contractor by cash payment upon demand.

**8.17 Employment Eligibility Verification**

- 8.17.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees providing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.
- 8.17.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

**8.18 Facsimile Representations**

The County and Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Change Notices and Amendments prepared pursuant to Subparagraph 8.4, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices and Amendments to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

#### **8.19 Fair Labor Standards**

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

#### **8.20 Force Majeure**

8.20.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this Subparagraph as "force majeure events").

8.20.2 Notwithstanding the foregoing, a default by a subcontractor of Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such subcontractor, and without any fault or negligence of either of them. In such case, Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this Subparagraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.

8.20.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

#### **8.21 Governing Law, Jurisdiction, and Venue**

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all

purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

#### **8.22 Independent Contractor Status**

8.22.1 This Contract is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.22.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

8.22.3 The Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.

8.22.4 The Contractor shall adhere to the provisions stated in Paragraph 7.3 (Confidentiality).

#### **8.23 Indemnification**

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Contractor's acts and/or omissions arising from and/or relating to this Contract.



## **8.24 General Provisions for All Insurance Coverage**

Without limiting Contractor's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Subparagraphs 8.24. and 8.25 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract.

### **8.24.1 Evidence of Coverage and Notice to County**

1. Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to the County Project Manager prior to commencing services under this Contract.
2. Renewal Certificates shall be provided to County not less than ten (10) days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or subcontractor insurance policies at any time.
3. Certificates shall identify all Required Insurance coverage types and limits specified herein, reference the Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand dollars (\$50,000.00), and list any County required endorsement forms.
4. Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its

insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its subcontractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against Contractor and/or County.

#### 8.24.2 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

#### 8.24.3 Cancellation of or Changes in Insurance

Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which County may suspend or terminate this Contract.

#### 8.24.4 Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from Contractor resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to Contractor or pursue Contractor reimbursement.

#### 8.24.5 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

#### 8.24.6 Contractor's Insurance Shall Be Primary

Contractor's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

#### 8.24.7 Waivers of Subrogation

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

#### 8.24.8 Subcontractor Insurance Coverage Requirements

Contractor shall include all subcontractors as insureds under Contractor's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein, and shall require that each subcontractor name the County and Contractor as additional insureds on the subcontractor's General Liability policy. Contractor shall obtain County's prior review and approval

of any subcontractor request for modification of the Required Insurance.

8.24.9 Deductibles and Self-Insured Retentions (SIRs)

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.24.10 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

8.24.11 Application of Excess Liability Coverage

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

8.24.12 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

8.24.13 Alternative Risk Financing Programs

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

#### 8.24.14 County Review and Approval of Insurance Requirements

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

#### 8.25 Insurance Coverage

- 8.25.1 **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$4 million
Products/Completed Operations Aggregate:	\$4 million
Personal and Advertising Injury:	\$2 million
Each Occurrence:	\$2 million

- 8.25.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

- 8.25.3 **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as an alternate employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any Federal workers or workmen's compensation law or any Federal occupational disease law.

- 8.25.4 **Professional Liability/Errors and Omissions:** Insurance covering Contractor's liability arising from or related to this Contract, with limits of not less than \$2 million per claim and \$ 2 million aggregate. Further, Contractor understands and agrees it

shall maintain such coverage for a period of not less than three (3) years following this Contract's expiration, termination, or cancellation.

- 8.25.5 **Crime Coverage:** Insurance with limits in amounts not less than indicated below covering against any loss of money, securities, or other property referred to in this Contract, and naming the County as a Loss Payee.

Employee Dishonesty:	\$500,000
Computer Fraud;	\$500,000

8.26 **Intentionally Omitted**

8.27 **Nondiscrimination and Affirmative Action**

- 8.27.1 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- 8.27.2 The Contractor shall certify to, and comply with, the provisions of Exhibit C (Contractor's EEO Certification).
- 8.27.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 8.27.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status or political affiliation.
- 8.27.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person

shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract, or under any project, program, or activity supported by this Contract.

8.27.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this Subparagraph 8.27 when so requested by County.

8.27.7 If the County finds that any provisions of this Subparagraph 8.27 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Contract.

8.27.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

8.28 **Non Exclusivity**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Contract shall not restrict the Department from acquiring similar, equal or like goods and/or services from other entities or sources.

8.29 **Notice of Delays**

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

8.30 **Intentionally Omitted**

8.31 **Notice to Employees Regarding the Federal Earned income Credit**

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

8.32 **Notice to Employees Regarding the Safely Surrendered Baby Law**

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit I of this Contract and is also available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

8.33 **Notices**

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibits D (County's Administration) and E (Contractor's Administration). Addresses may be changed by either party giving ten (10) days prior written notice thereof to the other party. The CEO or his designee shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

8.34 **Prohibition Against Inducement or Persuasion**

Notwithstanding the above, the Contractor and County agree that, during the term of this Contract and for a period of one (1) year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

8.35 **Public Records Act**

8.35.1 Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to Subparagraph 8.37 (Record Retention and



Inspection/Audit Settlement) of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records, including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction, provided that the County will endeavor to provide Contractor with prompt notice of any such required disclosure so that Contractor may seek to prevent or limit the scope of such disclosure.

- 8.35.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

#### 8.36 **Publicity**

- 8.36.1 The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may otherwise be provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Contract within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County Project Director. The County shall not unreasonably withhold written consent.

- 8.36.2 The County may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Subparagraph 8.36 shall apply.

**8.37 Record Retention and inspection/Audit Settlement**

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Contractor agrees that, upon reasonable prior notice to the Contractor, and no more than once per calendar year, the County, or its authorized representative, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract during regular business hours. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if such material is located outside Los Angeles County, then the Contractor shall deliver such material to the County at a location in Los Angeles County.

- 8.37.1 In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor, or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 8.37.2 Failure on the part of the Contractor to comply with any of the provisions of this Subparagraph 8.37 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

8.37.3 If, at any time during the term of this Contract, or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than the payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

8.38 **Recycled Bond Paper**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

8.39 **Subcontracting**

8.39.1 The requirements of this Contract may not be subcontracted by the Contractor without the advance approval of the County. Any attempt by Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Contract.

8.39.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:

- A description of the work to be performed by the subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by the County.

8.39.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the

same manner and to the same degree as if such subcontractor(s) were Contractor's employees.

- 8.39.4 The Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.
- 8.39.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. The Contractor is responsible to notify its subcontractors of this County right.
- 8.39.6 The County Project Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.
- 8.39.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 8.39.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to the County Project Manager before any subcontractor employee may perform any work hereunder.

8.40 **Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program**

Failure of the Contractor to maintain compliance with the requirements set forth in Subparagraph 8.14 (Contractor's Warranty of Adherence to County's Child Support Compliance Program), shall constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Contract pursuant to Subparagraph 8.42 (Termination for Default) and pursue debarment of the Contractor, pursuant to County Code Chapter 2.202.

#### 8.41 Termination for Convenience

8.41.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than **ninety (90)** days after the notice is sent.

8.41.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Contract on the date and to the extent specified in such notice; and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.41.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Contract shall be maintained by the Contractor in accordance with Subparagraph 8.37 (Record Retention and Inspection/Audit Settlement).

#### 8.42 Termination for Default

8.42.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the judgment of the County Project Director:

- Contractor has materially breached this Contract; or
- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within fifteen (15) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

- 8.42.2 Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in Subparagraph 8.42.1 above if its failure to perform this Contract arises out of causes beyond the control and without the fault of the Contractor. Such causes may include, but are not limited to: acts of god or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, an unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this Subparagraph, the term "subcontractor(s)" means subcontractor(s) at any tier.
- 8.42.3 If, after the County has given notice of termination under the provisions of this Subparagraph 8.42, it is determined by the County that the Contractor was not in default under the provisions of this Subparagraph 8.42, or that the default was excusable under Subparagraph 8.42.2, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Subparagraph 8.41 (Termination for Convenience).
- 8.42.4 The rights and remedies of the County provided in this Subparagraph 8.42 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- 8.42.5 Contractor may, by written notice to County, terminate the whole or any part of this Contract, if County has materially breached this Contract and has not cured such material breach within sixty (60) days of receiving notice of such breach.

#### **8.43 Termination for Improper Consideration**

- 8.43.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the Contractor's performance pursuant to this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.
- 8.43.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.
- 8.43.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

#### **8.44 Termination for Insolvency**

- 8.44.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:
- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy code, and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
  - The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
  - The appointment of a Receiver or Trustee for the Contractor; or
  - The execution by the Contractor or a general assignment for the benefit of creditors.

8.44.2 The rights and remedies of the County provided in this Subparagraph 8.44 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**8.45 Termination for Non-Adherence of County Lobbyist Ordinance**

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

**8.46 Termination for Non-Appropriation of Funds**

Notwithstanding any other provision of this Contract, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

**8.47 Validity**

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

**8.48 Waiver**

No waiver by the County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this Subparagraph 8.48 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.



8.49 **Warranty Against Contingent Fees**

8.49.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide establish commercial or selling agencies maintained by the Contractor for the purpose of securing business.

8.49.2 For breach of this warranty, the County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.50 **Warranty of Compliance with County's Defaulted Property Tax Reduction Program**

Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Contractor qualifies for any exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, with Los Angeles County Code Chapter 2.206.

8.51 **Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program**

Failure of Contractor to maintain compliance with the requirements set forth in Subparagraph 8.50 (Warranty of Compliance with County's Defaulted Property Tax Reduction Program) shall constitute default under this Contract. Without limiting the rights and remedies available to County under any other provision of this Contract, failure of Contractor to cure such default within ten (10) days of notice shall be grounds upon which County may terminate this Contract and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

8.52 **Dispute Resolution Procedure**

8.52.1 Contractor and County agree to act promptly and diligently to mutually resolve any disputes which may arise with respect to this Contract. All such disputes shall be subject to the provisions of this Subparagraph 8.52.

- 8.52.2 Contractor and County agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which County, in its sole discretion, determines should be delayed as a result of such dispute or if Contractor has a reasonable basis for not performing. County shall continue to pay sums not in dispute during any such period of continued performance.
- 8.52.3 If Contractor fails (without a reasonable basis) to continue without delay its performance hereunder which County, in its sole discretion, determines should not be delayed as a result of such dispute, then any additional costs which may be incurred by Contractor or County as a result of Contractor's failure to continue to so perform shall be borne by the Contractor, and Contractor shall make no claim whatsoever against County for such costs. Contractor shall promptly reimburse County for such County costs, as determined by County, or County may deduct all such additional costs from any amounts due to Contractor from County, whether under this Contract or otherwise.
- 8.52.4 If County fails to continue without delay to perform its responsibilities under this Contract which County, in its sole discretion, determined should not be delayed as a result of such dispute, then any additional costs incurred by the Contractor or County as a result of County's failure to continue to so perform shall be borne by County, and County shall make no claim whatsoever against Contractor for such costs. County shall promptly reimburse Contractor for all such additional Contractor costs subject to the written approval of such costs by County.
- 8.52.5 In the event of any dispute between the parties with respect to this Contract, Contractor and County shall submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.
- 8.52.6 In the event that the Project Managers are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to the parties' respective Contract Administrators for further consideration and discussion to attempt to resolve the dispute.
- 8.52.7 In the event that the Contract Administrators are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the

matter shall immediately be submitted to Contractor's President and County's Assistant Executive Officer for further consideration and discussion to attempt to resolve the dispute.

8.52.8 In the event that the Contractor's President and County's Assistant Executive Officer are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then each party may assert its other rights and remedies as provided by law.

8.52.9 All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all levels described in this Subparagraph 8.52, the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face-to-face meeting or by telephone, or in writing by exchange of correspondence.

8.52.10 Notwithstanding any other provision of this Contract, County's right to terminate this Contract pursuant to Subparagraph 8.41 (Termination for Convenience), Subparagraph 8.42 (Termination for Default), Subparagraph 8.44 (Termination for Insolvency), or any other termination provision hereunder, and County's right to seek injunctive relief to enforce the provisions of Subparagraph 7.3 (Confidentiality), and Subparagraph 9.7 (Confidentiality of County Records), shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of County's rights, and shall not be deemed to impair any claims that Contractor may have against County or Contractor's rights to assert such claims after any such termination or such injunctive relief has been obtained.

## **9.0 UNIQUE TERMS AND CONDITIONS**

### **9.1 Contractor's Obligations as a "Business Associate" Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)**

The County is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Under this Contract, the Contractor provides services to the County and the Contractor receives, has access to, and/or creates Protected Health Information, as defined in Exhibit J in order to provide those services. The County and the Contractor therefore agree to the terms of Exhibit J

(Contractor's Obligations as a "Business Associate" Under Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) (Business Associate Agreement).

**9.2 Ownership of County Data**

9.2.1 County shall be the sole owner of all right, title and interest, including copyright, in and to all of County's data on the System.

9.2.2 All the rights and obligations of this Subparagraph 9.2 shall survive the expiration or termination of this Contract.

**9.3 Ownership of the System and License**

Contractor shall retain all right, title, and interest, including copyright, in and to the Source Code and all intellectual property embodied in and associated with the System modules, and the County shall have a perpetual license to use the System.

Contractor hereby grants to County a non-exclusive, perpetual, world-wide license to copy, disclose, maintain and, for up to three hundred (300) concurrent and up to six hundred thirty one (631) remote Users, use the System, and any other tools, procedures or know-how that become inextricably embodied in the System. Contractor hereby grants an option to County, exercisable at County's sole and absolute discretion, to purchase from Contractor additional concurrent User licenses and additional remote User licenses, set forth in Exhibit B (Pricing Schedule).

**9.3.1 License Term**

The License granted under this Contract shall commence upon the Effective Date and, provided undisputed payments for such License are made as provided herein, shall continue through the term of this Contract and for a period of two (2) years following termination or expiration of the Contract (hereinafter "Transition Period") at no cost to County. Notwithstanding the preceding sentence, during the Transition Period, the License shall apply to the Application Software and Work Product and will not include any Hosting Services and/or Third Party Software licensed to County by Contractor, unless Contractor's license for such Third Party Software allows such use without additional cost to County or Contractor.

### 9.3.2 Scope of License

The License granted by Contractor under this Contract provides the County with the following rights:

1. To use, install, integrate with other software, operate and execute (a) during the term of the Contract, the System Software in the System Environment on an unlimited number of computers, servers, local area networks and wide area networks, including web connections and (b) during the Transition Period, the Application Software on a County server with computing power approximately equal to the Production Server running an operating system that is then supported by Contractor for its customers generally, or its equivalent at the time, by an unlimited number of Users in the conduct of the business of the County as provided in the Contract;
2. To use, modify, copy, and display the Documentation as intended by Contractor, including, but not limited to, System and User manuals, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Contract and License;
3. To permit third party access to the Application Software, the Documentation, or any part thereof, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Contract and the License, including for the provision of System Maintenance Services, Application Modifications, Professional Services or other business use or support of the Application Software as contemplated by this Contract; provided, however, without limiting County's rights under this Subparagraph 9.7.2, County covenants and agrees that it shall not exercise any of the rights contained in this Subparagraph 9.7.2(3) unless and until the occurrence of any one of the Release Conditions;
4. Pursuant to Subparagraph 8.1 (Assignment and Delegation), to reproduce and use a reasonable number of copies of the System Software provided by Contractor to County and permitted assignees, for archive and backup purposes; and
5. During the term of the Contract, to use, copy, and test System Software, and specifically the Baseline Software, in the Test Environment, including for the purpose of building

its own solutions or models, as mutually agreed to by the parties.

#### 9.3.3 License Restrictions

County acknowledges and agrees (i) that the System Software provided by Contractor to County under this Contract, including related Documentation, is the confidential and copyrighted property of Contractor, or its licensors, and all rights therein not expressly granted to County are reserved to Contractor, or its licensors, as applicable; and (ii) that Contractor, or its licensors, retain all proprietary rights in and to the foregoing. Subsequently, County's License to the System Software provided by Contractor hereunder is limited by the restrictions set forth in this Subparagraph 9.3.3 below. County will not:

1. Reverse engineer, disassemble or decompile the System Software provided by Contractor;
2. Transfer, sublicense, rent, lease, convey or assign (unless resulting from a Contract Assignment under Subparagraph 8.1 (Assignment and Delegation)) the System Software provided by Contractor;
3. Copy or reproduce the System Software provided by Contractor in any way except as reasonably necessary for backup, archival or business continuity purposes;
4. Use the System Software provided by Contractor on a timesharing, service bureau, subscription service or rental basis for any third party;
5. Use the System Software provided by Contractor to process data for the benefit of any third parties outside of this Project;
6. Use the System Software for any purpose other than as specified in this Contract or Project; or
7. Remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on, or during the use of, the System Software

#### 9.3.4 Escrow Agreement

The Contractor shall enter into its customary agreement (the "Escrow Agreement") with an outside third party to escrow the

Source Code, programming information and Documentation for the Application Software modules version licensed by the County (including all modules, database tables and definitions, files, customizations, data conversion programs and interfaces) and any and all Updates or version changes provided to the County at the inception of this Contract and thereafter. The County shall pay all costs associated with such escrow arrangement, including, without limitation, the fees of the escrow agent. At the conclusion of the development, programming, construction and customization of the County's Application Software modules, the customized version will replace the Source Code in escrow, and the Escrow Agreement shall be amended to reflect the County's customized Application Software modules and the revised escrow arrangements. Contractor shall, on a yearly basis, at the County's cost, arrange for an independent audit of this escrow to confirm the availability and completeness of the information and that the most current version of the System is in escrow.

- 9.3.5 County will use reasonable means to ensure that Contractor's proprietary and/or confidential items are safeguarded and held in confidence. County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of Contractor.

9.4 **Patent, Copyright, and Trade Secret Indemnification**

- 9.4.1 The Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, as such are incurred, for or by reason of any actual or alleged infringement of any patent or copyright, or other rights of any third party, or any actual or alleged trade secret disclosure or misappropriation, arising from or related to the System or the operation and utilization of Contractor's work under this Contract (hereinafter collectively referred to as "Infringement Claim(s)"). Contractor shall have no obligation to County under this Paragraph 9.4 if any Infringement Claim is caused by use by County of the System other than in accordance with the Specifications and other applicable Documentation, as initially determined by County Project Director but subject to Subparagraph 8.52 (Dispute Resolution Procedure). Any legal defense pursuant to Contractor's indemnification obligations under this Subparagraph 9.4 shall be conducted by Contractor and performed by counsel selected by Contractor.

Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as required by law and this Contract, County shall be entitled to reimbursement for all such costs and expenses.

9.4.2 Without limiting the foregoing, in the event the County Project Director becomes aware that ongoing use of the System, or any part thereof, is the subject of any Infringement Claim that might preclude or impair County's use of the System or any portion thereof (e.g. injunctive relief), or that County's continued use of the System or a portion thereof may subject it to punitive damages or statutory penalties or other costs or expenses, County shall give written notice to Contractor of such fact(s). Upon notice of such facts, Contractor shall, at no cost to County, either (1) procure the right, by license or otherwise, for County to continue to use the System or affected part(s) thereof to the same extent of County's license under this Contract, or (2) to the extent Contractor is unable to procure such rights, replace or modify the System or the affected part(s) with another part or component of equivalent quality and performance capabilities, in County's determination, to become non-infringing, non-misappropriating and/or non-disclosing.

9.4.1 If Contractor fails to complete the remedial acts set forth above within ninety (90) days after the date of the written notice from County, County shall have the right to take such remedial acts it determines to be reasonable to mitigate any impairment of its use of the System or the affected part(s) thereof or damages or other costs or expenses (hereafter referred to as "County's Remedial Acts"). Contractor shall indemnify County for all amounts paid and all direct and indirect costs associated with County's Remedial Acts. Failure by Contractor to pay such amounts and costs within ten (10) days after receiving an invoice from County shall, in addition to, and cumulative to all other remedies entitle County to immediately withhold payments due to Contractor up to the total of the amounts and costs paid in connection with County's Remedial Acts.

## 9.5 Limited Warranty – Disclaimer and Limitation of Liability

### 9.5.1 Limited Warranty

The System is provided "as is" without additional warranty of any kind, and Contractor expressly disclaims all other warranties,



express or, including, but not limited to, the implied warranties of design, merchantability, fitness for a particular purpose, any warranties arising from a course of dealing, usage, or trade practice. Contractor does not warrant that the functions contained in the System will meet County's requirements, or that the operation of the System will be uninterrupted or error-free, or that defects in the System will be corrected. Furthermore, Contractor does not warrant or make any representations regarding the use or the results of the use of the System in terms of its correctness, accuracy, reliability, or otherwise. No oral or written information or advice given by Contractor or Contractor's representatives shall create any warranty with regard to the System or in any way increase the scope of this warranty.

#### 9.5.2 Limitation of Liability

Under no circumstances, including negligence, shall Contractor be liable for any lost revenue or profits or any incidental, indirect, special, or consequential damages that result from the use or inability to use the System, even if Contractor or Contractor's authorized representative has been advised of the possibility of such damages. In no event shall Contractor's total liability to County for all damages, losses, and causes of action, whether in Contract, tort (including negligence) or otherwise, exceed a sum equal to ninety (90) days service fees paid by County to Contractor under this Contract. In addition, Contractor will not be liable for any claims of any party arising out of any alleged or actual infringement by the System of any intellectual property rights of any third party. This limitation of liability provision, however, shall not relieve Contractor's indemnification obligations to third parties pursuant to Subparagraph 8.23 (Indemnification), of this Contract nor shall it apply to any loss or related expense which is actually covered under any of the commercial insurance policies required to be maintained by Contractor pursuant to this Contract.

#### 9.5.3 Limitations Concerning Third Party Material

Contractor shall have no responsibility under any condition for performance of any hardware or programs licensed by it from third parties, and County shall rely solely on the manufacturers' warranty, if any.

#### 9.5.4 Exclusions

Contractor shall not be responsible to the extent any failure to perform in accordance with the foregoing warranties is caused by (a) County's failure to use the System in accordance with instructions included in the Documentation provided to County by Contractor, (b) the modification of the System by any person other than the Contractor, its employees, agents, affiliates or subcontractors (unless such modification was authorized or approved by any on the foregoing) or (c) problems caused by the Server's connectivity to County's network. If Contractor is requested by County to service such matters, County shall pay Contractor an additional fee for such services.

#### 9.5.5 Risks Considered

Contractor's pricing reflects the allocation of risks and limitation of liability in this Contract.

### 9.6 **Warranties**

#### 9.6.1 Contractor shall perform warranty services as set forth in this Contract.

1. The System shall be in substantial compliance with the Specifications and with the descriptions and representations (including, but not limited to, Deliverable documentation, performance capabilities, accuracy, completeness, characteristics, specifications, configuration, standards, functions and requirements applicable to professional software design meeting industry standards) set forth in Exhibit A (Statement of Work) and its Attachments.
2. All tasks, subtasks, Deliverables, goods, services, and other work shall be performed in a timely and professional manner by qualified personnel.
3. All tasks, subtasks, Deliverables, goods, services, and other work shall be completed in accordance with this Contract, Deliverable documentation and manufacturer's specifications.
4. The System components shall be capable of interconnecting and/or interfacing with each other, when taken together, shall be capable of delivering all of the

functionality as set forth in this Contract (including, without limitation, the Specifications and Exhibit A (Statement of Work) and Attachments thereto).

5. Contractor shall not knowingly cause any unplanned interruption of the operations of, or accessibility to the System or any System component through any device, method or means including, without limitation, the user of any "virus", "lockup", "time bomb", or "key lock", "worm", device or program, or disabling code, which has the potential or capability of compromising the security of County's confidential or proprietary information or of causing any unplanned interruption of the operations of, or accessibility of the System or any System component to County or any User or which could alter, destroy, or inhibit the User of the System, any System component, or the data contained therein (collectively referred to for purposes of this Subparagraph as "Disabling Device(s)") which could block access to or prevent the use of the System or any System component by County or Users. Contractor represents, warrants and agrees that it has not purposely placed, nor is it aware of, any Disability Device on any System component provided to County under this Contract, nor shall Contractor knowingly permit any subsequently delivered System component to contain any Disabling Device, other than lock-offs contained on the delivered media which only prevents user of software contained on such media other than System components.
6. The System shall be in substantial compliance with the performance standards set forth in Attachment 1 (Performance Standards Requirements) of Exhibit A (Statement of Work).
7. Provided that County is paying the fee as specified in Exhibit B (Pricing Schedule) for services pursuant to Subparagraph 5.1 (Basic Monthly Maintenance and Support) of Exhibit A (Statement of Work), then all Updates, enhancements, improvements, releases or version of the System, or any component or module of the System (other than Customization), and all available Documentation related thereto, shall be provided to County, at no additional cost over and above the sums otherwise payable by County.

8. Contractor shall use its best efforts to prevent viruses from being incorporated or introduced into the System, or Updates or enhancements thereto prior to delivery thereof to County, and shall utilize its best efforts to prevent any viruses being incorporated or introduced in the process of Contractor's loading of the System, Updates and enhancements thereto, or being introduced in the process of Contractor's performance of online support.

#### 9.6.2 Additional Warranties

Contractor further represents, warrants, covenants and agrees throughout the term of this Contract to all of the following in providing the System, conversions, and services of Contractor described herein:

1. County shall be entitled to use the System and all System components subject only to County's obligation to make the required payments under this Contract. Contractor represents and warrants that this Contract is neither subject nor subordinate to any right or claim of any third party, including, without limitation, Contractor's creditors. Further, Contractor represents and warrants that during the term of this Contract, it shall not subordinate this Contract or any of its rights hereunder to any third party without the prior written consent of County, and without providing such subordination instrument for non-disturbance of County's use of the System and System components in accordance with this Contract.
2. Contractor shall escrow the Source Code for the account of the County, subject to the provisions of Subparagraph 9.3.4 (Escrow Agreement).
3. Contractor is duly authorized to grant to County all rights, including, but not limited to, license rights, granted by this Contract with respect to all Application Software.

#### 9.6.3 Continuous Product Support

If Contractor assigns this Contract, is acquired, becomes otherwise controlled by another individual or entity, or sells, assigns, or transfers more than fifty percent (50%) of its interest in the System (generically referred to as a "Successor Event"), such successor shall assume in writing all of the obligations of Contractor under this Contract.

#### 9.6.4 Third Party Software

##### 1. Modification

Contractor represents and warrants that it has not modified and shall not modify, nor does Contractor have any need to modify, Third Party Software in order for the System to fully perform in accordance with warrants that it does not have any license or other right to modify Third Party Software and that Third Party Software shall be provided to County in the same unmodified form as received by Contractor from the applicable third party. Contractor represents and warrants that Third Party Software shall, together with the remainder of the System, fully satisfies all requirements of the Contract without the need for any modification of Third Party Software by Contractor or otherwise.

##### 2. License Agreement

County acknowledges that it may have to execute certain third party license agreements in respect to Third Party Software. To the extent that any such third party license conflicts with this Contract as it applies to County's right to use or modify this System, Contractor shall take all necessary action and pay all sums required to provide County with all the rights to use and modify the System afforded by this Contract. Contractor warrants that whether or not such third party license agreements are required of County, County shall receive perpetual licenses of all Third Party Software that shall allow use of the System in accordance with all of the terms of this Contract, providing County pays any required maintenance fees.

3. In the event it nonetheless becomes necessary to modify Third Party Software to satisfy any of the requirements of this Contract, Contractor shall promptly, at no cost to County, either: (1) obtain a license from the appropriate third party which shall enable Contractor to modify such Third Party Software, and Contractor shall provide all necessary modifications or (2) provide an upgrade or alternative solution, which is functionally equivalent, in County Project Director's reasonable determination, in lieu of modifying such Third Party Software. If County exercises its option to terminate this Contract for convenience pursuant to Paragraph 8.41 (Termination for

Convenience), the obligations of Contractor set forth in this Paragraph shall be null and void. Nothing herein shall require Contractor to pay for a new release, version, or revision of Third Party Software, which is not otherwise provided under maintenance and support.

**9.7 Confidentiality of County Records**

- 9.7.1 Contractor shall maintain the confidentiality of all records and information, including, but not limited to, billings, County records, claimant/plaintiff records and similar information, in accordance with all applicable Federal, State and local laws, regulations, ordinances, guidelines and directives relating to confidentiality. Contractor shall inform all of its officers, employees and agents providing services hereunder of the confidentiality provisions of this Contract. Contractor shall provide to County an executed Contractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement (Exhibit F) for each of its employees performing work under this Contract in accordance with Subparagraph 8.22 (Independent Contractor Status). Contractor shall indemnify and hold harmless County, its officers, employees and agents, from and against any and all loss, damage, liability, and expense, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, arising from any disclosure of such records and information by Contractor, its officers, employees, or agents, except for any disclosure authorized by this Subparagraph 9.7.
- 9.7.2 With respect to any identifiable information concerning any claimant/plaintiff that is obtained by Contractor, Contractor shall: (1) not use any such information for any purpose whatsoever other than carrying out the express terms of this Contract; (2) promptly transmit to County all requests for disclosure of any such information; (3) not disclose, except as otherwise specifically permitted by this Contract, any such information to any person or organization other than County without County's prior written authorization that the information is releasable; and (4) at the expiration or termination of this Contract, return all such information to the County or maintain such information according to the written procedures sent to Contractor by County for this purpose.

IN WITNESS WHEREOF, Contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chairman of said Board and attested by the Executive Officer-County Clerk of the Board of Supervisors thereof, the day and year first above written.

COUNTY OF LOS ANGELES

By: *Joe Yaroslansky*  
Chairman, Board of Supervisors



ATTEST:

SACHI A. HAMAI  
Executive Officer-Clerk  
Board of Supervisors

By: *Benjamin Zavala*  
Deputy

APPROVED AS TO FORM:

JOHN F. KRATTLI  
Acting County Counsel

By: *Behnaz Tashakorian*  
Behnaz Tashakorian  
Deputy County Counsel

P & C CLAIMS, INC.

By: *[Signature]*

*McRae B Johnston*  
Name

*COO*  
Title

*2-14-12*  
Date

I hereby certify that pursuant to  
Section 25163 of the Government Code,  
delivery of this document has been made.

SACHI A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

By: *Benjamin Zavala*  
Deputy

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

187

FEB 28 2012

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

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## STATEMENT OF WORK

### 1.0 BACKGROUND

The County has a license for an automated Workers' Compensation (WC) Claims Administration System (System) from P&C Claims Incorporated.

The County currently has four (4) contracts with WC third party administrators (WC TPAs) to provide claims administration. These contractors handle an average of 10,500 new claims and 24,000 open claims annually. There are about 400,000 total claims in the system. In addition to the WC TPAs, the System is used by over 300 end users from various County departments to process, monitor and report on WC claims. Ongoing System maintenance is required to ensure timely and accurate administration and processing of these claims.

### 2.0 SCOPE

This Statement of Work (Exhibit A) defines the services which the Contractor shall provide to County on a fixed-price deliverable basis including: 1) Basic monthly maintenance and support, and 2) customizations to Contractor's identified software, as defined in Subparagraph 3.4 below.

### 3.0 DEFINITIONS

3.1 Acceptance; Accepted: "Acceptance" and "Accepted" shall mean County's written approval of any task, subtask, deliverable, goods, services or other Work provided by Contractor to County, consistent with the requirements in Subparagraph 4.1.4 herein.

3.2 Contractor Hardware (Hardware): "Hardware" shall mean but is not limited to all equipment purchased by Contractor necessary to operate System, including equipment purchased by any of Contractor's subcontractor(s).

3.3 Contractor Identified Software Package (Software): "Software" shall mean all Contractor applications necessary to successfully run System as established by the County. Software shall also mean third party software, as specified in Subparagraph 3.20 below. Software shall include, but not be limited to:

- GENCOMP: A character based application running on a legacy system that provides claims administration functions.



- GENLEGAL: A GenComp subsystem ( an application running within the GENCOMP environment) that provides additional functions for the administration of litigated claims.
  - Data Warehouse: Data store capturing data from the claims database for simple and efficient reporting.
- 3.4 Customization(s): "Customizations" shall mean any change(s) to the System not covered under the Basic Monthly Maintenance and Support that may include, but not be limited to, software modifications, additional interfaces and related Documentation, and upgrade to the ClaimsVision platform which Contractor may provide at County's request in the form of Optional Work in accordance with Subparagraph 5.3 herein.
- 3.5 Deficiency(ies): "Deficiency(ies)" shall mean and include defect(s) in design, development, programming, implementation, materials, or workmanship; error(s); omissions; deviation(s) from published or mutually agreed upon standards, or from any of the Specifications, or from any County-approved Deliverable(s); or other problem(s) which result in the System not performing in accordance with the provisions of the Contract, including, without limitation, the Specifications.
- 3.6 Deliverable(s): "Deliverable(s)" shall mean any task, subtask, item, and/or a service or other consideration to be provided by Contractor under this Contract.
- 3.7 Final Acceptance: "Final Acceptance" shall mean County's sole and absolute discretion to approve in writing the work performed.
- 3.8 Fiscal Year: "Fiscal Year" shall mean the twelve (12) month period beginning July 1 and ending June 30<sup>th</sup>.
- 3.9 FROI-SROI –EDI: "FROI-SROI-EDI" shall mean First Report of Injury - Subsequent Report of Injury – Electronic Data Interface". County is required by the State of California (State) to report all injuries to the State.
- 3.10 GenIRIS ASP: "GenIRIS ASP" shall mean the web enable version of the GenIRIS application; a graphics based version of the GenCOMP software.
- 3.11 Hosting Services: "Hosting Services" shall mean the secure environment set-up and maintained by Contractor at Contractor's facility, in which County data and application software is retained.
- 3.12 Implementation Package: "Implementation Package" shall mean the documents listed below that describe the procedures to design and implement a project for requested and/or required changes to the System.

The documents listed below shall include, without limitation a detailed work plan, work breakdown structure, beginning and completion dates of phases, Gantt chart, staffing resources and organization. The Implementation Packages submitted pursuant to this Exhibit A shall automatically become a part of the Contract upon County's approval following their delivery. Implementation Packages are subject to final approval by County and may be requested at County's sole discretion. Implementation Packages

- A. Hardware and Communications Requirements Document
- B. Requirements Package
- C. Requirements Document
- D. UniVerse Descriptors
- E. ASP Connection Documentation
- F. Training Materials (electronic)
- G. Final Implementation Procedures

- 3.13 Maintenance Schedule: "Maintenance Schedule" shall mean the time allotted to Contractor to run daily, normal, routine maintenance, as approved by County.
- 3.14 Phase(s): "Phase(s)" shall mean the organization of work to be executed and delivered in the Implementation Package as specified in Subparagraph 3.12.
- 3.15 Software License: "Software License" shall mean authorized use of Contractor's software, as specified in Subparagraph 3.3, the payment for which is included in the Monthly Maintenance and Support fee.
- 3.16 Specifications: "Specifications" shall mean the functional and operational requirements/features as set forth in this Statement of Work and Attachment I (Performance Standards Requirements Chart).
- 3.17 System: "System" shall mean all Software, Hardware, third party software, Customizations, conversions, interfaces, databases and services described in this Contract and as otherwise agreed to in writing by Contractor and County pursuant to Paragraph 8.4 (Change Notices and Amendments) of the Contract, collectively comprising the Workers' Compensation Claims Administration System. Reference to the System may include one or more components or modules thereof of the entire System.
- 3.18 Third Party Administrators: "Third Party Administrators" shall mean the identified, contracted organizations that handle workers' compensation claims administration for the County.

3.19 Third Party Software: "Third Party Software" shall mean application software owned by third parties which County may or may not have a license to use, but is necessary to run County's WC Claims Administration System. If County does not have a license to use the necessary Third Party Software, Contractor shall purchase a license for use at no additional charge to County. Third Party Software shall include, but is not limited to the following:

- Citrix Software: Software used for application publishing and for providing a secure gateway for client access to GenSource applications.
- Microsoft Software: Operational system and various other software used throughout the ASP environment.
- AIX: Operating system for the database server.
- Wintegrate: Report generator.
- English Wizard: Query and reporting tool used to ask "English" questions to query against the database.
- UniVerse: Database software.

3.21 Upgrade: "Upgrade" shall mean a routinely-issued revision of the Software, generally issued for the purpose of correcting discovered errors, improving efficiency or overall performance and incorporating enhancements or statutory changes that Contractor generally makes available to its customers of the Software but does not include customizations that include departures from the standard specifications with regard to functionality or enhancements or added features or functions.

3.22 User: "User" shall mean any person or entity authorized by County to access or use the System or a System Component.

3.23 Work: "Work" shall mean any and all tasks, subtasks, Deliverables, goods, services and/or other work provided, or to be provided, by or on behalf of the Contractor pursuant to this Contract, including System components, System implementation services, System Maintenance and Optional Work.

3.24 Work Order(s): "Work Order(s)" shall mean a fully executed project ordering document for customizations to be provided by Contractor upon County's request and approval in accordance with the Contract. Each Work Order executed under Contract shall adhere to the format shown in Attachment II of this Exhibit A.

## **4.0 RESPONSIBILITIES**

### **4.1 County's Responsibilities**

County will administer the Contract according to Paragraph 6.0 (Administration of Contract – County) of the Contract. Specific duties will include:

4.1.1 Monitor Contractor's performance in the daily operation of the Contract.

4.1.2 Provide direction to Contractor in areas relating to policy, information and procedural requirements.

4.1.3 Prepare Change Notices in accordance with Paragraph 8.4 (Change Notices and Amendments) of the Contract.

4.1.4 Approval and Disapproval of Work

County shall have the right to approve or disapprove any Work, task, Deliverable, Work Order, goods, services and/or other work provided by Contractor.

In the event County disapproves of any Work, task, deliverable, Work Order, goods, services and other work provided by Contractor, Contractor shall have ten (10) days from Contractor's receipt of written notice of disapproval to correct, modify, supplement or otherwise remedy such disapproved matter and resubmit it to County for approval. In the event of a subsequent disapproval, County may request subsequent resubmissions, enter into a Dispute Resolution process, or declare the Contract in breach.

Unless expressly provided otherwise, any and all approval or acceptance by County under the Contract may be given, withheld, or denied in County's sole and absolute discretion.

### **4.2 Contractor's Responsibilities**

4.2.1 Contractor shall designate a Project Manager who shall be a full-time employee of Contractor.

4.2.2 The Project Manager shall be the central point of contact for County and shall act as a liaison for Contractor in coordinating the performance under the Contract.

4.2.3 The Project Manager shall have the authority to act for Contractor on all matters relating to the daily operation of the Contract. The Project Manager or alternate shall be able to effectively communicate in English, both orally and in writing.

4.2.4 The Project Manager or alternate shall attend meetings as requested by County.

4.2.5 Other Contractor Personnel

4.2.5.1 Contractor shall assign a sufficient number of employees to perform the required Work under the Contract and to complete all services in a timely manner.

4.2.5.2 All personnel providing services in conjunction with the Contract shall be required to sign a "Contractor Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement", as set forth in Subparagraph 7.3.4 of the Contract. During the term of the Contract, Contractor shall maintain an updated file of the signed forms and shall forward copies of all signed forms to the County Project Manager.

4.2.5.3 Contractor shall, to the maximum extent possible, maintain a constant level of staffing for County's Contract. Contractor shall promptly fill any staff vacancy with employees having qualifications at least equivalent to those of the staff being replaced.

4.2.6 Contractor Employee Acceptability

4.2.6.1 Contractor shall provide County with the names of its staff assigned to work on County's Contract.

4.2.6.2 Contractor shall not subcontract with any personnel for performance of services hereunder unless the provisions for Paragraph 8.39 (Subcontracting) of the Contract are met.

4.2.7 Materials and Equipment

Contractor shall be responsible for the purchase of all hardware, software, and all other materials and equipment necessary to provide these Contract services. Contractor shall use materials

that are safe for the environment and safe for use by its employees.

#### 4.2.8 Contractor's Office and Hours of Operation

4.2.8.1 Contractor shall maintain an office with a telephone in the company's name where Contractor conducts business. The office shall be staffed during the hours of 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding holidays observed by the Contractor, by at least one employee, who can appropriately respond to the priority level of an issue, any service requests, and complaints which may be received about Contractor's performance of the Contract. Contractor shall provide County with a telephone number to call when Contractor's office is closed.

#### 4.2.8.2 Emergency Notifications

Contractor Project Manager and County Project Manager, or their respective designees, shall be accessible twenty-four (24) hours a day, seven (7) days a week to each other and/or other County staff for emergency reporting or consultation. Contractor shall provide an emergency telephone number where Contractor Project Manager, or designee, may be reached twenty-four (24) hours per day.

### 5.0 SPECIFIC WORK REQUIREMENTS

It is County's expectation that Contractor will complete the tasks specified below in a manner which will contribute to and result in the completion of deliverables outlined herein. Contractor shall be responsible for any penalty incurred due to the failure of Contractor's hardware, software, or hosting services as defined in this Exhibit A, providing such failure is not caused by an unreasonable delay or unreasonable lack of cooperation by County.

#### 5.1 Basic Monthly Maintenance and Support

Contractor shall maintain all software and hardware necessary to successfully operate the System, including Third Party Software, in reliable and fully operational condition.

Basic Monthly Maintenance and Support shall include, but is not limited to maintenance and support, software updates, data processing support and maintenance, hosting services and FROI/SROI -EDI support.

Upon receiving notification by County of any deficiency or repair found in any of the tasks specified in this Subparagraph 5.1, Contractor shall take Corrective Actions, as prescribed in the Service Level Agreement, Attachment II of this Statement of Work.

**5.1.1 Task #1 – Maintenance and Support Services**

**Deliverable: Services performed as prescribed in the Service Level Agreement.**

Maintenance and Support Services shall include, but are not limited to any repair or maintenance required to the existing software, software licenses, and/or hardware provided by the Contractor, and to Third Party Software. Services shall also include assistance for inquiries and troubleshooting related to the Contractor's software and/or hardware and Third Party Software. Contractor shall provide the following:

- Assist Users with any technical issues;
- Perform routine System maintenance as specified in Paragraph 6.0 (Maintenance Schedule) of this Exhibit A;
- Increase Software Licenses upon written request from County;
- Diligently monitor Contractor's software, hardware, and Third Party Software
- Correct, issue and/or install Software and/or Hardware, such as security patches, whether or not defects have been reported to Contractor by County;
- Provide all technical personnel, equipment and tools sufficient to perform timely, effective repairs;
- Diagnose the reported problem and advise County of the estimated time to repair;
- Repair the reported problem, provide a procedure to work around the problem, or substantiate the determination that no repair is necessary;
- Test all repairs to ensure that the repair was successful and that the operation is defect-free;

- Coordinate all technical support services with County;
- Fully document any and all repair work provided to County;  
and
- Respond to any questions

#### 5.1.1.1 Software Licenses

Additional Software Licenses requested by County shall be billed separately and in accordance with Subparagraph 5.5 (Invoices and Payments) of the Contract.

#### 5.1.1.2 Software Updates

Provided that the Contract is still in effect at the end of the base term of the Contract, and every two (2) years thereafter, Contractor shall make an Upgrade to the software available to the County. There shall be no installation charge for any Upgrade which can be installed remotely without customization. County will cooperate as necessary to allow installation of any Upgrade and understands that its failure to do so may, in Contractor's sole discretion, relieve Contractor of any subsequent obligation under this provision. All Upgrades shall be delivered to County electronically via Contractor's host server.

#### 5.1.1.3 Data Processing Support and Maintenance

Contractor shall provide biennial Upgrades and identify all data processing routines that will be affected by data entered for the current Fiscal Year (FY). Contractor shall determine the required changes to each data processing routine to ensure the current FY will be correctly processed.

For data processing routines that require changes, Contractor shall provide the following:

- Identify all data processing routines and the changes required to handle current FY data input or output. This shall include data acceptance and



internal calculations of dates up to and beyond the current FY;

- Submit a list of routines to be corrected to County;
- Make corrections to program code and test;
- Provide County with documentation of processing changes and data entry requirements for entering the current FY in data formats;
- Assist County as required in testing the data entry of the current FY;
- Upon successful completion of County's testing of data routines, install the defect-free replacement of relevant application code on the County data server.

#### 5.1.1.4 Hosting Services

Hosting Services shall be Contractor's responsibility to provide a secure and efficient environment to house County's WC administration application and database. Contractor shall provide the following:

- Provide dedicated database server(s) for County use only, not shared with other Contractor clients; and
- Provide adequate data storage to accommodate County's current and future needs.

#### 5.2 FROI/SROI-EDT Export Format Services

Contractor shall provide the functionality to allow County to:

- Provide claims data in readable formats to supply to the agreed upon EDI Exporter responsible for exporting data to the State;
- Provide the functionality to ensure that all claims that have been acknowledged by the State are documented as such, whether approved or denied; and

- Provide the functionality to allow County to furnish reports to TPAs listing claims that require correction as directed by the State of California (State).

#### **5.2.1 Task #2: FROI/SROI – EDI Export Format Services**

##### **Deliverable: Compliant FROI/SROI Reporting**

Contractor shall provide the functionality to allow County to:

- Report successfully and timely to the State within the mandated deadlines, namely provision of correctly formatted claims data ready for export with the frequency established by County;
- Capture all acknowledgments from the State; and
- Provide accurate reporting back to TPAs of acknowledgments.

In the event County determines it is in its best interest to change the agreed upon EDI Exporter, Contractor shall continue to be responsible for all services listed in this Subparagraph 5.3.1 and in the Contract in whole.

The software will provide the means by which County may run data routines and report data to the EDI Exporter and the State. Under no circumstance shall the Contractor be responsible for any penalties applied from the State caused by any action or deficiency by County or the EDI Exporter in running routines or reporting data.

#### **5.3 Customizations**

Contractor shall make customizations during the life of the Contract as requested, approved and accepted by County. County shall pay a minimum of two (2) hours at the rates specified in Exhibit B (Payment Schedule, Customization Costs (Hourly Rate)), for Contractor to examine the feasibility of and to develop preliminary specifications for the requested customization. The estimate submitted by the Contractor as stated on the "Authorization for Billable Services" form shall be valid for sixty (60) days from the date submitted. All completed customizations shall be subject to final County approval and shall automatically become a part of the Contract. Should Contractor find that a customization to an upgraded and/or updated application is not feasible, Contractor shall

provide its written justification to County within seven (7) business days upon reaching such finding.

### **5.3.1 Task #3 – General Customizations**

#### **Deliverable: Software Customization**

County shall submit the Request for Estimate (RFE) form, as provided in Attachment II to this Exhibit A to initiate customization requests.

## **6.0 MAINTENANCE SCHEDULE**

To mitigate delays in System performance, Contractor shall provide all daily, routine and normal System maintenance between the hours of 10:00 p.m. and 6:00 a.m. Pacific Time, seven (7) days per week. Should Contractor find that an unexpected maintenance service is required outside of the regular Maintenance Schedule, Contractor shall attempt to provide County with at least forty-eight (48) hours notice. Contractor and County may request to change the Maintenance Schedule pursuant to Paragraph 8.4 (Change Notices and Amendments) of the Contract; however, County shall have the right of final acceptance and approval of any such change.

## **7.0 DATA STORAGE**

All County data shall be stored on Contractor's equipment at Contractor's place of business specified in Exhibit E (Contractor's Administration). In the event that Contractor finds that any or all County data must be transferred to another location within the continental United States, Contractor shall notify County prior to such transfer. If Contractor finds that any or all County data must be transferred to a location outside the continental United States, Contractor shall obtain County's approval prior to such transfer. Contractor shall provide all such transfer of data at its own expense, and County will not be responsible for any related interruptions or impairments of the Hosting Services, as specified herein.

Contractor shall provide County with at least sixty (60) days notice of its intent to transfer County data to any other location. At a minimum, Contractor shall include the following information regarding the transfer of data:

- Purpose for transferring data;
- Address of the new location;
- Transfer timeline

County, at its discretion, may require Contractor to prepare an Implementation Package for the transfer, as defined in Subparagraph 3.12 (Implementation Package) of this Exhibit A.

## **8.0 SECURITY**

Contractor shall provide County with documented proof of the program measures taken to safeguard County data housed by Contractor, including the security of the environment in which County data is imported and exported to and from Contractor. The proof document shall include the architectural design of the security program pursuant to the requirements of this Contract.

## **9.0 OWNERSHIP AND TRANSITION**

All computerized claim data and computerized claim files shall be the property of the County and shall be returned to County or delivered to a new service provider, as designated by the County. Contractor understands that all such data and files are the property of County and not Contractor.

In the event that County implements a new workers compensation claims administration system provided by a new contractor, Contractor shall fully cooperate with County and agrees to continue to provide services under this Contract until transition is complete and County accepts and approves new system. Should this Contract expire before County accepts and approves new system, Contractor agrees to extend this Contract pursuant to Paragraph 8.4 (Change Notices and Amendments) of the Contract.

### **PROVISION IN CURRENT SOW:**

Upon expiration or termination of the Contract, or in the event the County elects not to extend the Contract at the end of a term, or otherwise terminates the Contract for default, convenience or insolvency, Contractor shall fully cooperate with County during the transition to whatever service replacement method County determines to be in its best interest.

## **10.0 TRAINING**

In the event County should require training for services not listed in Subparagraph 5.1 herein, Contractor shall provide training at the rates specified in Exhibit B (Payment Schedule). Contractor shall recommend training curriculum and provide qualified instructor(s), appropriate and related training materials and training facility.

### **10.1 Instructor's Travel and Lodging Expenses**

Travel and lodging expenses of instructor(s) providing training under the Contract shall be billed separately. The invoices for such expenses shall be prepared and submitted in accordance with Subparagraph 5.5 (Invoices and Payments) of the Contract.

#### **11.0 MINIMUM REQUIREMENTS FOR USERS**

Contractor shall provide County with a list of minimum requirements needed for all System Users (including, but not limited to, CEO, County Counsel, client County departments and WC TPAs) to utilize the System. The list of minimum requirements shall include, at a minimum, connectivity requirements, hardware requirements and software applications. Contractor shall contact Users for requirements information, as instructed by County.

#### **12.0 REPORT DESIGN**

Contractor shall continue to provide and/or make available, with the same frequency and distribution requirements, all reports currently being received and/or accessed by County.

#### **13.0 QUALITY ASSURANCE PLAN**

County shall evaluate Contractor's performance under the Contract in accordance with the procedures as specified in Paragraph 8.15 (County's Quality Assurance Plan), of the Contract.

#### **14.0 BUSINESS CONTINUITY PLAN**

Contractor shall provide to County a written Business Continuity Plan that specifies a structured and integrated process that ensures uninterrupted provision of critical services related to the Contract, following an event that could interrupt the business operations. The plan shall include, but not be limited to, the following:

- Contractor policies and procedures to assure County's continued operation following an event;
- A description of County critical services and business processes prioritized according to importance;
- Establish viable recovery time frames relative to its impact to County's operations;

- Alternative business processes and/or location information, including address, description of equipment in use, telephone and facsimile numbers, key contact and other critical information.

Contractor shall provide County with annual plan updates, due on the anniversary of the Contract.

The Business Continuity Plan is subject to County approval. County will not be required to identify deficiencies in Contractor's Business Continuity Plan. County shall neither assume responsibility nor liability for Contractor's Business Continuity Plan.

#### **15.0 PERFORMANCE STANDARDS REQUIREMENTS (PSR) AND SERVICE LEVEL AGREEMENT (SLA)**

The PSRs and SLAs, as specified in Attachment I to this Exhibit A are intended to be completely consistent with the terms and conditions of this Contract and Statement of Work, and are not meant or intended in any case to create, extend, revise, or expand any Contractor obligation or responsibility beyond that which is defined in the Contract or Statement of Work. In the event of any apparent inconsistency between services specified in the Contract, Exhibit A, the PSR and SLA, the meaning apparent in the Contract and Exhibit A will prevail. If the PSR and/or SLA seem to have created services that are not clearly set forth in the Contract and Exhibit A, those services will be null and void and place no requirement on the Contractor.

## PERFORMANCE STANDARDS REQUIREMENTS CHART

When Contractor's performance does not conform to the requirements of the Contract or if Contractor does not meet or maintain the agreed upon service levels, County will have the option to apply the following remedies providing such failure is not caused by an unreasonable delay or unreasonable lack of cooperation by County.

STANDARD	REMEDY
<b>Deliverables for Task #1:</b>  Maintenance and Support Services	Failure to meet any part of this Deliverable may result in the termination of Contract for default as determined by County in its sole discretion.
<b>Deliverables for Task #2:</b>  Compliant FROI/SROI Reporting	Failure to meet the terms of this Deliverable as a result of Contractor's negligence may result in a penalty of up to 15% of the FROI/SROI State Reporting annual costs specified in Exhibit B (Payment Schedule). Penalties will be determined by County and may be ongoing until deliverable is completed to County's satisfaction. Under no circumstance shall the County be responsible for any penalties applied by the State due to any action or deficiency for which Contractor is responsible.

## SERVICE LEVEL AGREEMENT (SLA)

### I. Maintenance and Support Services

#### A. Technical Support

1. Contractor shall provide help desk support via telephone, facsimile and/or email. The County has and will continue to have a dedicated support representative along with backup representatives in the event its dedicated representative is unavailable.
2. Contractor and County shall prioritize all issues, defects, and other errors according to the following schedule:

PRIORITY	DEFINITION
1	A problem causing critical impact to County's operation and no acceptable workaround is immediately available. Contractor shall respond to County within two (2) hours. After normal business hours, including weekends, Contractor shall respond to notifications made by the County Project Manager or designee within two (2) hours of such notification. Work begins as soon as possible after notification and continues until problem is resolved or a workaround is available. If resolution requires a software correction, it is delivered to County as soon as the correction is available.
2	A problem causing significant (but not critical) impact to County's operation and no acceptable workaround is immediately available. Work begins after County's Priority 1 issues are resolved as specified in Definition 1 above, and continues until the problem is resolved or a workaround is available. If resolution requires a software correction, it is delivered to County as soon as the correction is available.
3	A problem that impairs the functionality of performance, but County can work around it without undue effort. Contractor will investigate the problem, decide if a workaround is acceptable and if resolution requires a software correction. If a software correction is required, Contractor may schedule the correction for a future release and/or provide patch as soon as possible.
4	A request for information or assistance that is not of a serious nature, but that cannot be handled immediately over the telephone. A software error or defect exists but does not impede any functionality or performance. Contractor will suggest a workaround to County. If a software correction is required, Contractor may schedule the correction for a future release and/or provide a patch as soon as possible.



## B. Hardware Maintenance

All servers are constantly monitored and updated with the latest patches and releases from each respective vendor. Microsoft security patches are maintained using WSUS (Windows Security Update Server). These patches are downloaded and installed automatically upon authorization of the network administrator. WSUS polls for updates on an hourly basis and alerts the administrator as soon as patches are available. Service Packs are downloaded as soon as they are available. They are installed on test servers, and then on corporate production servers. Once they have been verified for internal production, then they are scheduled for installation on the ASP environment.

1. Upon release of a new version of the operating system or database version, Contractor will schedule a certifications test. County will receive regular updates to the application software. As part of the application upgrade, Contractor will review the operating system and database versions running on the database server. If there is a new version of either that has been certified by Contractor, it will be installed along with the new version of the application.
2. In addition, as part of the application upgrade, any microcode or firmware updates available for the database server are installed as well. In the event that a maintenance level update for the operating system is determined to be of a critical nature that cannot wait for an application upgrade, it will be scheduled and installed along with any microcode or firmware updates as soon as possible.
3. During each application upgrade, all hardware is reviewed. Any hardware not meeting all functional and security requirements is replaced. The average tenure for servers in the ASP environment is 3-5 years.

## C. Systems Operations

1. Contractor ensures the following system operation service levels:
  - a. 24X7X365 real-time monitoring and alerting of every element of the ASP environment is conducted to track the overall health of systems and proactively address any possible problematic areas.

- b. Fault-tolerant, redundant and failover systems are in place to ensure high availability, data integrity and that no single points of failure exist for the maximum possible up-time.
- c. Occasionally the internet service provider that services the GenSource ASP datacenter will perform regularly scheduled maintenance which could affect internet communications to the datacenter. The scheduled maintenance is performed after-hours or on weekends and will be communicated to County as soon as Contractor is aware of the planned maintenance which usually ranges from fifteen (15) minutes to one (1) hour in duration.

D. Back-up and Discovery Recovery

- 1. Contractor's back-up and recovery services currently in place are:
  - a. Full back-ups are performed on all production servers nightly. In addition, server images are taken prior to any updates.
  - b. Back-up tapes are sent to an off-site data storage site each weeknight. The monthly back-up set is saved permanently at the site.
  - c. Restore time is dependent on the amount of data needed, the type of restore (software or data) and the date of the restore. If the required tape is off-site, it can be retrieved in less than two (2) hours. The time for a restore could vary from thirty (30) minutes to four (4) hours.
  - d. All servers and communication equipment are connected to an Uninterrupted Power Supply. Contractor's current back-up site is \_\_\_\_\_.
- 2. The current data center is equipped with early warning smoke detection system that will automatically drop the temperature, as well as smoke detectors that release dry flame retardant. The data center is accessible only via key cards, which are held by a limited number of Contractor personnel.

E. Software Licenses

Notifications are immediately provided by each respective software vendor upon the release of any new hot fix or service pack. All hot fixes and service packs are installed and tested in a test environment. Upon

successful completion of the test, they are scheduled for installation in production.

For claims management applications, a new release will be installed every two (2) years. In the interim, any fixes or enhancements done for the County or any critical fixes will be installed as soon as they have tested.

F. Software Updates

Once a patch has successfully completed Contractor's internal quality assurance (QA) process, it is installed in a test environment on the County servers. Once Contractor's internal QA team has tested it, County will be given the opportunity to test it. Upon approval by County, the changes are moved into the production environment.

Enhancements are normally included in the new version of the software released each year. The County's maintenance requirements provides for the installation of a new release every other year. If an enhancement is deemed critical such that the County cannot wait for a next version of the software, it will be installed as specified for software patches.

New releases are created once a year. A new release will be installed on the County servers every other year. Contractor will assign a project manager to oversee the installation of the new release. Contractor will submit a project plan for the installation, that will include requirements session, training and user acceptance testing.

Any new release of a third party software that integrates with the application software will be subject to compatibility testing. Once tested, the new versions will be installed with the next application upgrade. If third party software is shared across the client base, then the new version will be installed for all clients during the next client upgrade. All clients will be notified in advance of the change in order to give time for testing the new version in a test environment.

**P&C CLAIMS**  
**REQUEST FOR CUSTOMIZATION, BILLABLE SERVICES**  
**AND**  
**AUTHORIZATION PROCEDURES**

This is an overview of P&C Claims Client Support procedures for processing Request for Estimates and Authorization for Billable Services.

**Request for Estimate**

1. Client completes and sends a Request for Estimate (RFE), copy attached to its P&C Claims Client Support Representative (Support Rep).
2. Support Rep saves an electronic copy of the RFE in the online Client Support files.
3. Support Rep opens a tracking database case. This database is used for internal work assignments and recording status.
4. Support Rep forwards RFE to upper management for work approval.
5. If approved, Support Rep opens a project in the database used for timekeeping and billing purposes.
6. Support Rep sends approval or rejection notice to client.
7. Support Rep distributes the approved RFE to consulting and the product manager for analysis and design of project, in order to determine the estimate of work.
8. Support Rep assigns the work in the tracking database to the product manager or consulting.

### **Authorization for Billable Services**

1. Estimator performs the analysis of the project.
2. Estimator gives the estimate to Support Rep and assigns track back to the Support Rep for communicating an Authorization of Billable Services to the client.
3. Support Rep coordinates and collects the estimated hours for completion of the work request from all departments.
4. Support Rep assembles the quote on an Authorization form, copy attached, and emails the quoted Authorization for Billable Services to client.
  - Support Rep saves a copy of the Authorization in the online Client Support files.
  - Support Rep updates the tracking database with the quoted hours and client communication information.
5. The client either:
  - Accepts, signs and returns the Authorization for Billable Services to the Support Rep, or
  - Rejects the Authorization for Billable Services
6. If authorization is rejected, the project is cancelled in the database and the track is closed.
7. If authorization is accepted, the Support Rep
  - Updates the online Client Support files, tracking and project databases.
  - Assigns the work to the product or operations manager.
  - Distributes the Authorization to the appropriate internal department personnel.
8. Monthly hours are invoiced to the client based on actual work completed on the project in the previous month. Invoicing continues through project completion.

9. Upon project completion and internal quality assurance, a service patch is generated and installed on the client's test environment for client testing.
10. The client tests and informs the Support Rep that the change is approved for production use.
11. The Support Rep schedules a time for programming to install the program changes into the production accounts.
12. The charges are moved into Live Production.

**PAYMENT SCHEDULE  
BASE TERM YEAR 1**

<b>SERVICE</b>	<b>COST (ANNUAL)</b>
<b>MONTHLY MAINTENANCE AND SUPPORT:</b>  Includes: Fees to subsidize ongoing costs including application software maintenance, administrative support services, backups, recovery, software licenses, computer hardware and overhead costs, and third party software <sup>1</sup> maintenance. (\$20,400/month)	\$244,800.00
<b>HEALTH TECH EDI REPORTING TO THE STATE OF CALIFORNIA:</b>  Subcontractor: Health Tech Transaction and maintenance fees for mandated electronic data submission: <ul style="list-style-type: none"> <li>• EDI to and from the State</li> <li>• First Report of Injury and/or Subsequent Reports of Injury</li> <li>• Acknowledgment and Error Reporting</li> </ul> Annual volume of expected transmission: >150,000	\$103,500.00
<b>TRAINING:</b>  User training as requested by the County and priced according to hourly rates specified in Page B-6	\$20,000.00
<b>UPGRADE:</b>  Upgrade from GenIris System to ClaimsVision	\$300,000.00
<b>OPTIONAL WORK:</b>  For changes required for System programming, reporting, support services, increase in user licenses, and migration to next generation platform	\$100,000.00
<b>BASE TERM YEAR 1 MAXIMUM COST</b>	<b>\$768,300.00</b>

<sup>1</sup> Prices of third party products are subject to change at any time without notice.

**PAYMENT SCHEDULE  
BASE TERM YEAR 2**

SERVICE	COST (ANNUAL)
<b>MONTHLY MAINTENANCE AND SUPPORT:</b>  Includes: Fees to subsidize ongoing costs including application software maintenance, administrative support services, backups, recovery, software licenses, computer hardware and overhead costs, and third party software <sup>1</sup> maintenance (\$20,808/month)	\$249,696.00
<b>HEALTH TECH EDI REPORTING TO THE STATE OF CALIFORNIA:</b>  Subcontractor: Health Tech Transaction and maintenance fees for mandated electronic data submission: <ul style="list-style-type: none"> <li>• EDI to and from the State</li> <li>• First Report of Injury and/or Subsequent Reports of Injury</li> <li>• Acknowledgment and Error Reporting</li> </ul> Annual volume of expected transmission: >150,000	\$103,500.00
<b>TRAINING:</b>  User training as requested by the County and priced according to hourly rates specified in Page B-6	\$20,000.00
<b>UPGRADE:</b>  Upgrade from GenIris System to ClaimsVision	\$300,000.00 Aggregate
<b>OPTIONAL WORK:</b>  For changes required for System programming, reporting, support services, increase in user licenses, and migration to next generation platform	\$100,000.00 Aggregate
<b>BASE TERM YEAR 2 MAXIMUM COST</b>	\$373,196.00

<sup>1</sup> Prices of third party products are subject to change at any time without notice.



**PAYMENT SCHEDULE  
BASE TERM YEAR 3**

<b>SERVICE</b>	<b>COST (ANNUAL)</b>
<b>MONTHLY MAINTENANCE AND SUPPORT:</b>  Includes: Fees to subsidize ongoing costs including application software maintenance, administrative support services, backups, recovery, software licenses, computer hardware and overhead costs, and third party software <sup>1</sup> maintenance (\$21,224/month)	<b>\$254,688.00</b>
<b>HEALTH TECH EDI REPORTING TO THE STATE OF CALIFORNIA:</b>  Subcontractor: Health Tech Transaction and maintenance fees for mandated electronic data submission: <ul style="list-style-type: none"> <li>• EDI to and from the State</li> <li>• First Report of Injury and/or Subsequent Reports of Injury</li> <li>• Acknowledgment and Error Reporting</li> </ul> Annual volume of expected transmission: >150,000	<b>\$103,500.00</b>
<b>TRAINING:</b>  User training as requested by the County and priced according to hourly rates specified in Page B-6	<b>\$20,000.00</b>
<b>UPGRADE:</b>  Upgrade from GenIris System to ClaimsVision	<b>\$300,000 Aggregate</b>
<b>OPTIONAL WORK:</b>  For changes required for System programming, reporting, support services, increase in user licenses, and migration to next generation platform	<b>\$100,000.00 Aggregate</b>
<b>BASE TERM YEAR 3 MAXIMUM COST</b>	<b>\$378,188.00</b>

<sup>1</sup> Prices of third party products are subject to change at any time without notice.

# PAYMENT SCHEDULE OPTION YEAR 1

SERVICE	COST (ANNUAL)
<b>MONTHLY MAINTENANCE AND SUPPORT:</b>  Includes: Fees to subsidize ongoing costs including application software maintenance, administrative support services, backups, recovery, software licenses, computer hardware and overhead costs, and third party software <sup>1</sup> maintenance (\$21,649/month)	<b>\$259,788.00</b>
<b>HEALTH TECH EDI REPORTING TO THE STATE OF CALIFORNIA:</b>  Subcontractor: Health Tech Transaction and maintenance fees for mandated electronic data submission: <ul style="list-style-type: none"> <li>• EDI to and from the State</li> <li>• First Report of Injury and/or Subsequent Reports of Injury</li> <li>• Acknowledgment and Error Reporting</li> </ul> Annual volume of expected transmission: >150,000	<b>\$103,500.00</b>
<b>TRAINING:</b>  User training as requested by the County and priced according to hourly rates specified in Page B-6	<b>\$20,000.00</b>
<b>OPTIONAL WORK:</b>  For changes required for System programming, reporting, support services, increase in user licenses, and migration to next generation platform	<b>\$100,000.00</b>
<b>OPTION YEAR 1 MAXIMUM COST</b>	<b>\$483,288.00</b>

<sup>1</sup> Prices of third party products are subject to change at any time without notice.

**PAYMENT SCHEDULE  
OPTION YEAR 2**

<b>SERVICE</b>	<b>COST (ANNUAL)</b>
<b>MONTHLY MAINTENANCE AND SUPPORT:</b>  Includes: Fees to subsidize ongoing costs including application software maintenance, administrative support services, backups, recovery, software licenses, computer hardware and overhead costs, and third party software <sup>1</sup> maintenance (\$22,082/month)	\$264,984.00
<b>HEALTH TECH EDI REPORTING TO THE STATE OF CALIFORNIA:</b>  Subcontractor: Health Tech Transaction and maintenance fees for mandated electronic data submission: <ul style="list-style-type: none"> <li>• EDI to and from the State</li> <li>• First Report of Injury and/or Subsequent Reports of Injury</li> <li>• Acknowledgment and Error Reporting</li> </ul> Annual volume of expected transmission: >150,000	\$103,500.00
<b>TRAINING:</b>  User training as requested by the County and priced according to hourly rates specified in Page B-6	\$20,000.00
<b>OPTIONAL WORK:</b>  For changes required for System programming, reporting, support services, increase in user licenses, and migration to next generation platform	\$50,000.00
<b>OPTION YEAR 2 MAXIMUM COST</b>	<b>\$438,484.00</b>

<sup>1</sup> Prices of third party products are subject to change at any time without notice.

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**PAYMENT SCHEDULE**

### OPTION YEAR 3

SERVICE	COST (ANNUAL)
<b>MONTHLY MAINTENANCE AND SUPPORT:</b>  Includes: Fees to subsidize ongoing costs including application software maintenance, administrative support services, backups, recovery, software licenses, computer hardware and overhead costs, and third party software <sup>1</sup> maintenance (\$22,523/month)	<b>\$270,276.00</b>
<b>HEALTH TECH EDI REPORTING TO THE STATE OF CALIFORNIA:</b>  Subcontractor: Health Tech Transaction and maintenance fees for mandated electronic data submission: <ul style="list-style-type: none"> <li>• EDI to and from the State</li> <li>• First Report of Injury and/or Subsequent Reports of Injury</li> <li>• Acknowledgment and Error Reporting</li> </ul> Annual volume of expected transmission: >150,000	<b>\$103,500.00</b>
<b>TRAINING:</b>  User training as requested by the County and priced according to hourly rates specified in Page B-6	<b>\$20,000.00</b>
<b>OPTIONAL WORK:</b>  For changes required for System programming, reporting, support services, increase in user licenses, and migration to next generation platform	<b>\$50,000.00</b>
<b>OPTION YEAR 3 MAXIMUM COST</b>	<b>\$443,776.00</b>

<sup>1</sup> Prices of third party products are subject to change at any time without notice.

# OPTIONAL WORK COSTS (HOURLY RATE)

SERVICES	BASE TERM (3/1/12 -2/28/15)		OPTION YEAR 1 (3/1/15 – 2/29/16)		OPTION YEAR 2 (3/1/16 – 2/28/17)		OPTION YEAR 3 (3/1/17 – 2/28/18)	
	Regular	Rush/ Offshift	Regular	Rush/ Offshift	Regular	Rush/ Offshift	Regular	Rush/ Offshift
<b>Application Services</b>								
Consulting	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00
Training (Over the Phone)	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00
Documentation	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00
<b>Programming Services</b>								
Analysis	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00
New Product Installation	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00
Customization	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00
Data Recovery Services	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00	\$200.00	\$400.00

**CONTRACTOR'S EEO CERTIFICATION**P&C Claims, Inc.

Contractor Name

55 Broadway, Suite 3002, New York, NY 10006

Address

27-1403836

Internal Revenue Service Employer Identification Number

**GENERAL CERTIFICATION**

In accordance with Section 4.32.010 of the Code of the County of Los Angeles, the contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

**CONTRACTOR'S SPECIFIC CERTIFICATIONS**

- |  |   |                             |
|--|---|-----------------------------|
| 1. The Contractor has a written policy statement prohibiting discrimination in all phases of employment.   | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 2. The Contractor periodically conducts a self analysis or utilization analysis of its work force.   | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 3. The Contractor has a system for determining if its employment practices are discriminatory against protected groups.  | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 4. Where problem areas are identified in employment practices, the Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables. | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

McRae B Johnston

Authorized Official's Printed Name and Title

  
Authorized Official's SignatureJanuary 25, 2012

Date

**COUNTY'S ADMINISTRATION**

CONTRACT NO. \_\_\_\_\_

**COUNTY CONTRACT ADMINISTRATOR:**

Name: Laurie Milhiser (or designee)  
Title: Assistant Chief Executive Officer  
Address: Chief Executive Office – Risk Management Branch  
3333 Wilshire Blvd., Suite 820  
Los Angeles, CA 90010  
Telephone: (213) 351-5346 Facsimile: (213) 252-0405  
E-Mail Address: lmilhiser@ceo.lacounty.gov

**COUNTY MANAGER:**

Name: Alex Rossi  
Title: Manager, CEO  
Address: Chief Executive Office – Risk Management Branch  
3333 Wilshire Bl., Suite 1000  
Los Angeles, CA 90010  
Telephone: (213) 738-2154 Facsimile: (213) 252-0404  
E-Mail Address: arossi@ceo.lacounty.gov

**COUNTY PROJECT MANAGER:**

Name: Carl Yuan  
Title: Program Specialist, CEO  
Address: Chief Executive Office – Information Technology Service  
500 W. Temple Street, Room 781  
Los Angeles, CA 90012  
Telephone: (213) 974-4297 Facsimile: (213) 613-1001  
E-Mail Address: cyuan@ceo.lacounty.gov

**Notice to County shall be sent to the following:**

Name: Laurie Milhiser (or designee)  
Title: Assistant Chief Executive Officer  
Address: Chief Executive Office – Risk Management Branch  
3333 Wilshire Blvd., Suite 820  
Los Angeles, CA 90010  
Telephone: (213) 351-5346 Facsimile: (213) 252-0405  
E-Mail Address: lmilhiser@ceo.lacounty.gov

**CONTRACTOR'S ADMINISTRATION****CONTRACTOR'S NAME:** P&C Claims, Inc.**CONTRACT NO:** \_\_\_\_\_**CONTRACTOR'S PROJECT MANAGER:**

Name: Jan Kubota  
Title: Client Services Manager  
Address: 24911 Avenue Stanford, Suite 206  
Valencia, CA 91355  
Telephone: (661) 294-1300  
Facsimile: \_\_\_\_\_  
E-Mail Address: jkubota@pcisvision.com

**CONTRACTOR'S AUTHORIZED OFFICIAL(S)**

Name: Georgette Loizu  
Title: Executive Vice President  
Address: Trinity Centre, 111 Broadway, 17<sup>th</sup> Floor  
New York, NY 10006  
Telephone: (646) 442-8810  
Facsimile: \_\_\_\_\_  
E-Mail Address: gloizu@pcisvision.com

Name: McRae Johnston  
Title: COO  
Address: Trinity Centre, 111 Broadway, 17<sup>th</sup> Floor  
New York, NY 10006  
Telephone: (646) 442-8818  
Facsimile: \_\_\_\_\_  
E-Mail Address: mjohnston@pcisvision.com

**Notices to Contractor shall be sent to the following:**

Name: Georgette Loizu  
Title: Executive Vice President  
Address: Trinity Centre, 111 Broadway, 17<sup>th</sup> Floor  
New York, NY 10006  
Telephone: (646) 442-8810  
Facsimile: \_\_\_\_\_  
E-Mail Address: gloizu@pcisvision.com



CONTRACTOR EMPLOYEE ACKNOWLEDGMENT, CONFIDENTIALITY  
AND COPYRIGHT ASSIGNMENT AGREEMENT

Contractor Name \_\_\_\_\_

Contract No. \_\_\_\_\_

Employee Name \_\_\_\_\_

GENERAL INFORMATION:

Your employer referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires your signature on this Contractor Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement.

EMPLOYEE ACKNOWLEDGEMENT:

I understand and agree that the Contractor referenced above is my sole employer for purposes of the above-referenced contract. I understand and agree that I must rely exclusively upon my employer for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced contract.

I understand and agree that I am not an employee of the County of Los Angeles for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. I understand and agree that I do not have and will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

I understand and agree that I may be required to undergo a background and security investigation(s). I understand and agree that my continued performance of work under the above-referenced contract is contingent upon my passing, to the satisfaction of the County, any and all such investigations. I understand and agree that my failure to pass, to the satisfaction of the County, any such investigation shall result in my immediate release from performance under this and/or any future contract.

CONFIDENTIALITY AGREEMENT:

I may be involved with work pertaining to services provided by the County of Los Angeles and, if so, I may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, I may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. I understand that if I am involved in County work, the County must ensure that I, too, will protect the confidentiality of such data and information. Consequently, I understand that I must sign this agreement as a condition of my work to be provided by my employer for the County. I have read this agreement and have taken due time to consider it prior to signing.

**CONTRACTOR EMPLOYEE ACKNOWLEDGMENT, CONFIDENTIALITY  
AND COPYRIGHT ASSIGNMENT AGREEMENT**

I hereby agree that I will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between my employer and the County of Los Angeles. I agree to forward all requests for the release of any data or information received by me to my immediate supervisor.

I agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other original materials produced, created, or provided to or by me under the above-referenced contract. I agree to protect these confidential materials against disclosure to other than my employer or County employees who have a need to know the information. I agree that if proprietary information supplied by other County vendors is provided to me during this employment, I shall keep such information confidential.

I agree to report to my immediate supervisor any and all violations of this agreement by myself and/or by any other person of whom I become aware. I agree to return all confidential materials to my immediate supervisor upon completion of this contract or termination of my employment with my employer, whichever occurs first.

**COPYRIGHT ASSIGNMENT AGREEMENT**

I agree that all materials, documents, software programs and documentation, written designs, plans, diagrams, reports, software development tools and aids, diagnostic aids, computer processable media, source codes, object codes, conversion aids, training documentation and aids, and other information and/or tools of all types, developed or acquired by me in whole or in part pursuant to the above referenced contract, and all works based thereon, incorporated therein, or derived therefrom shall be the sole property of the County. In this connection, I hereby assign and transfer to the County in perpetuity for all purposes all my right, title, and interest in and to all such items, including, but not limited to, all unrestricted and exclusive copyrights, patent rights, trade secret rights, and all renewals and extensions thereof. Whenever requested by the County, I agree to promptly execute and deliver to County all papers, instruments, and other documents requested by the County, and to promptly perform all other acts requested by the County to carry out the terms of this agreement, including, but not limited to, executing an assignment and transfer of copyright in a form substantially similar to Exhibit M1, attached hereto and incorporated herein by reference.

The County shall have the right to register all copyrights in the name of the County of Los Angeles and shall have the right to assign, license, or otherwise transfer any and all of the County's right, title, and interest, including, but not limited to, copyrights, in and to the items described above.

I acknowledge that violation of this agreement may subject me to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PRINTED NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

CONTRACTOR NON-EMPLOYEE ACKNOWLEDGMENT, CONFIDENTIALITY  
AND COPYRIGHT ASSIGNMENT AGREEMENT

Contractor Name \_\_\_\_\_

Contract No. \_\_\_\_\_

Non-Employee Name \_\_\_\_\_

GENERAL INFORMATION:

The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires your signature on this Contractor Non-Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement.

NON-EMPLOYEE ACKNOWLEDGEMENT:

I understand and agree that the Contractor referenced above has exclusive control for purposes of the above-referenced contract. I understand and agree that I must rely exclusively upon the Contractor referenced above for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced contract.

I understand and agree that I am not an employee of the County of Los Angeles for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. I understand and agree that I do not have and will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

I understand and agree that I may be required to undergo a background and security investigation(s). I understand and agree that my continued performance of work under the above-referenced contract is contingent upon my passing, to the satisfaction of the County, any and all such investigations. I understand and agree that my failure to pass, to the satisfaction of the County, any such investigation shall result in my immediate release from performance under this and/or any future contract.

CONFIDENTIALITY AGREEMENT:

I may be involved with work pertaining to services provided by the County of Los Angeles and, if so, I may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, I may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. I understand that if I am involved in County work, the County must ensure that I, too, will protect the confidentiality of such data and information. Consequently, I understand that I must sign this agreement as a condition of my work to be provided by the above-referenced Contractor for the County. I have read this agreement and have taken due time to consider it prior to signing.

**CONTRACTOR NON-EMPLOYEE ACKNOWLEDGMENT, CONFIDENTIALITY  
AND COPYRIGHT ASSIGNMENT AGREEMENT**

I hereby agree that I will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between the above-referenced Contractor and the County of Los Angeles. I agree to forward all requests for the release of any data or information received by me to the above-referenced Contractor.

I agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information, and all other original materials produced, created, or provided to or by me under the above-referenced contract. I agree to protect these confidential materials against disclosure to other than the above-referenced Contractor or County employees who have a need to know the information. I agree that if proprietary information supplied by other County vendors is provided to me, I shall keep such information confidential.

I agree to report to the above-referenced Contractor any and all violations of this agreement by myself and/or by any other person of whom I become aware. I agree to return all confidential materials to the above-referenced Contractor upon completion of this contract or termination of my services hereunder, whichever occurs first.

**COPYRIGHT ASSIGNMENT AGREEMENT**

I agree that all materials, documents, software programs and documentation, written designs, plans, diagrams, reports, software development tools and aids, diagnostic aids, computer processable media, source codes, object codes, conversion aids, training documentation and aids, and other information and/or tools of all types, developed or acquired by me in whole or in part pursuant to the above referenced contract, and all works based thereon, incorporated therein, or derived therefrom shall be the sole property of the County. In this connection, I hereby assign and transfer to the County in perpetuity for all purposes all my right, title, and interest in and to all such items, including, but not limited to, all unrestricted and exclusive copyrights, patent rights, trade secret rights, and all renewals and extensions thereof. Whenever requested by the County, I agree to promptly execute and deliver to County all papers, instruments, and other documents requested by the County, and to promptly perform all other acts requested by the County to carry out the terms of this agreement, including, but not limited to, executing an assignment and transfer of copyright in a form substantially similar to Exhibit M1, attached hereto and incorporated herein by reference.

The County shall have the right to register all copyrights in the name of the County of Los Angeles and shall have the right to assign, license, or otherwise transfer any and all of the County's right, title, and interest, including, but not limited to, copyrights, in and to the items described above.

I acknowledge that violation of this agreement may subject me to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PRINTED NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

**Title 2 ADMINISTRATION**  
**Chapter 2.203.010 through 2.203.090**  
**CONTRACTOR EMPLOYEE JURY SERVICE**

**2.203.010 Findings.**

The board of supervisors makes the following findings. The county of Los Angeles allows its permanent, full-time employees unlimited jury service at their regular pay. Unfortunately, many businesses do not offer or are reducing or even eliminating compensation to employees who serve on juries. This creates a potential financial hardship for employees who do not receive their pay when called to jury service, and those employees often seek to be excused from having to serve. Although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials. This reduces the number of potential jurors and increases the burden on those employers, such as the county of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the county of Los Angeles has determined that it is appropriate to require that the businesses with which the county contracts possess reasonable jury service policies. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.020 Definitions.**

The following definitions shall be applicable to this chapter:

- A. "Contractor" means a person, partnership, corporation or other entity which has a contract with the county or a subcontract with a county contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more such contracts or subcontracts.
- B. "Employee" means any California resident who is a full-time employee of a contractor under the laws of California.
- C. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the county but does not include:
  - 1. A contract where the board finds that special circumstances exist that justify a waiver of the requirements of this chapter; or
  - 2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor; or
  - 3. A purchase made through a state or federal contract; or
  - 4. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, or reseller, and must match and inter-member with existing supplies, equipment or systems maintained by the county pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-3700 or a successor provision; or
  - 5. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, Section 4.4.0 or a successor provision; or
  - 6. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-2810 or a successor provision; or
  - 7. A non-agreement purchase with a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section A-0300 or a successor provision; or
  - 8. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section PP-1100 or a successor provision.

- D. "Full time" means 40 hours or more worked per week, or a lesser number of hours if:
1. The lesser number is a recognized industry standard as determined by the chief administrative officer, or
  2. The contractor has a long-standing practice that defines the lesser number of hours as full time.
- E. "County" means the county of Los Angeles or any public entities for which the board of supervisors is the governing body. (Ord. 2002-0040 § 1, 2002; Ord. 2002-0015 § 1 (part), 2002)

#### **2.203.030 Applicability.**

This chapter shall apply to contractors who enter into contracts that commence after July 11, 2002. This chapter shall also apply to contractors with existing contracts which are extended into option years that commence after July 11, 2002. Contracts that commence after May 28, 2002, but before July 11, 2002, shall be subject to the provisions of this chapter only if the solicitations for such contracts stated that the chapter would be applicable. (Ord. 2002-0040 § 2, 2002; Ord. 2002-0015 § 1 (part), 2002)

#### **2.203.040 Contractor Jury Service Policy.**

A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service. (Ord. 2002-0015 § 1 (part), 2002)

#### **2.203.050 Other Provisions.**

- A. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of county counsel, issue interpretations of the provisions of this chapter and shall issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other county departments.
- B. Compliance Certification. At the time of seeking a contract, a contractor shall certify to the county that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract. (Ord. 2002-0015 § 1 (part), 2002)

#### **2.203.060 Enforcement and Remedies.**

For a contractor's violation of any provision of this chapter, the county department head responsible for administering the contract may do one or more of the following:

1. Recommend to the board of supervisors the termination of the contract; and/or,
2. Pursuant to chapter 2.202, seek the debarment of the contractor. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.070. Exceptions.**

- A. Other Laws. This chapter shall not be interpreted or applied to any contractor or to any employee in a manner inconsistent with the laws of the United States or California.
- B. Collective Bargaining Agreements. This chapter shall be superseded by a collective bargaining agreement that expressly so provides.
- C. Small Business. This chapter shall not be applied to any contractor that meets all of the following:
  - 1. Has ten or fewer employees during the contract period; and,
  - 2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are less than \$500,000; and,
  - 3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

"Dominant in its field of operation" means having more than ten employees and annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, exceed \$500,000.

"Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.090. Severability.**

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 2002-0015 § 1 (part), 2002)

## ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and among P&C Claims, a Delaware corporation, \_\_\_\_\_ ("Licensee") and \_\_\_\_\_ (the "Escrow Agent").

- A. Licensee has entered into a license agreement (the "License Agreement") with P&C Claims for the license of certain computer programs specified in Escrow Agreement Exhibit A ("Licensed Computer Programs");
- B. Licensee desires to have access to the source code for the Licensed Computer Programs under certain specified conditions;
- C. P&C Claims has agreed to deliver to the Escrow Agent a copy of the source code for each Licensed Computer Program, together with any required key to decrypt such source code, specified on Escrow Agreement Exhibit A (individually and collectively, the "Source Code"); and
- D. The parties hereto have agreed upon and wish to set forth herein the terms and conditions of an escrow agreement with respect to the Source Code to be delivered to and held by the Escrow Agent.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Appointment of Escrow Agent**

P&C Claims and Licensee hereby appoint and designate the Escrow Agent as the escrow agent hereunder to receive, hold, maintain and release the Source Code in accordance with the terms of this Agreement. The Escrow Agent, by signing this Agreement, accepts appointment as escrow agent with respect to the Source Code, and agrees to receive, hold, maintain and release the Source Code in accordance with the terms of this Agreement. The Escrow Agent is not a party to, nor shall the Escrow Agent be concerned with the provisions of said License Agreement. No duties of the Escrow Agent may be implied by any agreement other than this Escrow Agreement.

2. **Deposits of Source Code**

Within five (5) business days after the execution of this Agreement, P&C Claims shall deposit with Escrow Agent a copy of the Source Code. The Source Code



## EXHIBIT H

shall be held, maintained, and released by the Escrow Agent in accordance with the terms and conditions hereinafter set forth.

### 3. Maintenance of the Source Code

The Source Code shall, subject to the terms and conditions of this Agreement, be held in safe custody by the Escrow Agent. Except as expressly provided in this Agreement, Escrow Agent shall not disclose or otherwise make available to any person or entity other than Licensee or P&C Claims or make any use whatsoever of, any portion of the Source Code without the prior written consent of P&C Claims. The Escrow Agent does not insure that the Source Code will be held in any environment other than a vault, and Escrow Agent shall not be required to take any further precautions to control the humidity, temperature or environment in which the Source Code will be stored.

### 4. Release of Source Code

#### 4.1 Request for Release

If, at any time Licensee is of the opinion that a Release Condition (as defined below) has occurred, Licensee may promptly provide P&C Claims and the Escrow Agent with a properly completed "Source Code Release Request" in the form attached hereto as Escrow Agreement Exhibit B. Any such request shall contain a detailed statement specifying the basis upon which Licensee has determined that a Release Condition exists. A "Release Condition" means any of the following: (i) P&C Claims permits or suffers to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law or any dissolution, winding up or liquidation proceeding, in respect thereof ("Proceeding"), and, if any such Proceeding is not commenced by P&C Claims, such Proceeding is consented to or acquiesced in any by P&C Claims, or results in the entry of an order for relief or shall remain for sixty (60) days undismissed, (ii) P&C Claims seeks, consents to or acquiesces in the appointment of any trustee, custodian, receiver or liquidator of P&C Claims or all or any substantial part of its properties (an "Appointment") or an order for an Appointment is entered, or (iii) P&C Claims ceases to maintain the Licensed Computer Program related to the Source Code requested to be released, or (iv) P&C Claims ceases its business operations.

#### 4.2 Release if Uncontested

If P&C Claims does not contest a Source Code Release by written notice to Licensee and Escrow Agent delivered within fifteen (15) days after

## EXHIBIT H

receipt of the Source Code Release Request, then the Escrow Agent shall promptly release and deliver the Source Code (in the cases of releases under clause (iii) of Subparagraph 4.1, limited to the Source Code for the Licensed Program(s) specified as no longer being maintained) to Licensee, who shall treat it in accordance with the provisions of the Source Code Release Request.

### 4.3 Release if Contested

If P&C Claims does contest a Source Code Release Request by written notice to Licensee and Escrow Agent delivered within fifteen (15) days after receipt of the Source Code Release Request, then the Escrow Agent shall hold the Source Code until jointly instructed by P&C Claims and Licensee, or until it receives an appropriate order of a court or arbitrator.

## 5. Term

Subject to earlier termination pursuant to Paragraph 6 or Paragraph 8, the Escrow shall continue until the Source Code is released. P&C Claims may request in writing to Escrow Agent and Licensee that the Source Code be released to it at any time when Licensee ceases to be a customer of P&C Claims and no Release Condition is then in effect. If Licensee does not contest such a request by P&C Claims by written notice to P&C Claims and Escrow Agent delivered within fifteen (15) days after receipt of the GSC request, then the Escrow Agent shall promptly release and deliver the Source Code to P&C Claims; otherwise the Escrow Agent shall hold the Source Code until jointly instructed by P&C Claims and Licensee, or until it receives an appropriate order of a court or arbitrator.

## 6. Fees and Expenses

The Escrow Agent shall be entitled to escrow fees and reasonable expenses in connection with the administration of this Agreement, all of which shall be paid by P&C Claims on behalf of Licensee; provided, however, that the aggregate amount of such escrow fees and expenses paid by Licensee shall not exceed two thousand five hundred dollars (\$2,500) in any calendar year (subject to increases based on cumulative increases in CPI and changes on any replacement of the Escrow Agent). If Licensee shall fail to pay any fee due hereunder within thirty (30) days after written notice of such failure (with a copy to the Escrow Agent), then this Agreement shall be terminated pursuant to Paragraph 5 (Term).

7. **Escrow Agent**

To induce the Escrow Agent to accept its appointment and act hereunder, P&C Claims and Licensee agree that:

7.1 **Depository**

The Escrow Agent shall act hereunder as a depository only, and shall not be concerned with the substance or contents of the Source Code.

7.2 **Documentation**

The Escrow Agent may act upon any written notice, request, waiver, consent, receipt or other instrument, document or other writing ("Documents") furnished to it which it believes to be genuine, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained. The Escrow Agent shall not be liable in connection with the performance by it of its duties pursuant to the provisions of any Document, which it believes to be genuine, except for its own gross negligence or willful misconduct..

7.3 **Liability**

The Escrow Agent shall not be liable for any act done or omitted by it, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, provided such act or omission is done without gross negligence or willful misconduct. In no event shall the Escrow Agent be liable to P&C Claims or Licensee for any damage to or loss of the Source Code due to any causes which are beyond the control of the Escrow Agent and not the result of its gross negligence or willful misconduct.

7.4 **Duties**

The Escrow Agent shall have no duties except those which are expressly set forth herein, which are purely ministerial in nature, and it shall not be bound by any notice of a claim, or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received in writing and signed by P&C Claims and Licensee, and if its duties herein are affected, unless it shall have given its prior written consent thereto.

7.5 Indemnification

P&C Claims and Licensee shall jointly and severally indemnify and hold the Escrow Agent, its employees, officers, agents, successors and assigns harmless from and against any and all losses, costs, damages or expenses (including reasonable attorneys' fees) ("Losses") it or they may sustain by reason of the Escrow Agent's service as escrow agent under this Agreement, except such any Losses incurred as a result of Escrow Agent's gross negligence or willful misconduct. The provisions of this Subparagraph shall survive the termination of this Agreement and the resignation or removal of the Escrow Agent.

7.6 Advice of Counsel

The Escrow Agent may act pursuant to the advice of counsel with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted in accordance with such advice that is not the result of Escrow Agent's gross negligence or willful misconduct. Such counsel shall be selected by the Escrow Agent in the sole discretion of the Escrow Agent, and the fees and expenses for such counsel shall constitute reasonable expenses in connection with the administration of this Agreement for purposes of Paragraph 6 of this Agreement.

7.7 Disputes

Except to the extent otherwise provided herein, if there is any disagreement between P&C Claims and Licensee resulting in adverse claims or demands being made in connection with the Source Code, or if the Escrow Agent in good faith is in doubt as to what action the Escrow Agent should take hereunder, then the Escrow Agent shall hold the Source Code until the Escrow Agent shall have received (i) a determination of a court of competent authority or a certified copy of an award of an arbitrator under an arrangement providing for no further appeal directing delivery of the Source Code, or (ii) a written agreement executed by P&C Claims and Licensee directing delivery of the Source Code in which event the Escrow Agent shall deliver the Source Code in accordance with such order or agreement. The Escrow Agent, at its option, shall be entitled to seek and, if obtained, rely conclusively upon an opinion of counsel to the effect that any court order delivered to Escrow Agent is sufficient to require delivery of the Source Code hereunder. The Escrow Agent shall be entitled to act on such court order and/or legal opinion without further question.

### 7.8 Limitation on Liability

In no event shall the Escrow Agent be liable, directly or indirectly, for any (i) damages or expenses arising out of the services provided hereunder, other than damages which result from the Escrow Agent's gross negligence or willful misconduct, or (ii) special or consequential damages, even if the Escrow Agent has been advised of the possibility of such damages.

### 8. Resignation or Termination

The Escrow Agent may resign as escrow agent by giving each of Licensee and P&C Claims not less than ninety (90) days written notice of the effective date of such resignation (the "Resignation Date"). Upon receiving such notice of resignation, Licensee and P&C Claims shall promptly appoint a successor escrow agent that is mutually acceptable to both parties. By mutual agreement, P&C Claims and Licensee shall have the right at any time upon not less than ten (10) days written notice to the Escrow Agent to terminate their appointment of the Escrow Agent as escrow agent hereunder, which notice shall specify the effective date of such termination (the "Termination Date"). The Escrow Agent shall continue to act as escrow agent under this Agreement until the Resignation Date or Termination Date, as the case may be. Licensee and P&C Claims shall use their reasonable efforts to appoint a successor escrow agent to fulfill the duties of the Escrow Agent hereunder for the remaining term of this Agreement in the event of the Escrow Agent's resignation or termination. Upon the acceptance by the successor escrow agent of its appointment in a writing signed by each of P&C Claims, Licensee and successor escrow agent, the successor escrow agent shall thereupon become the Escrow Agent hereunder effective on the Resignation Date or Termination Date. On the Resignation Date or Termination Date, the resigning Escrow Agent shall deliver the Source Code to the successor escrow agent. If on or prior to the Resignation Date, the resigning Escrow Agent has not received written instructions from Licensee and P&C Claims of a successor escrow agent, it may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief.

### 9. Notices

Any notices or other communications required or permitted hereunder shall be sufficiently given if done so in writing and sent by certified mail, postage prepaid; If to Licensee, address to it at \_\_\_\_\_ Attn: \_\_\_\_\_; if to P&C Claims, address to it at \_\_\_\_\_; or in any case to such other address as shall be

## EXHIBIT H

furnished in writing by such party. Such notices or other communications so given shall be deemed to have been given on the date so mailed.

### 10. Miscellaneous

#### 10.1 Governing Law

This Agreement shall be construed and governed in accordance with the internal laws of the State of California without regard to conflicts of laws principles.

#### 10.2 Complete Agreement

This Agreement and any documents referred to herein or executed contemporaneously herewith constitute the parties' entire agreement with respect to the subject matter hereof and supersede all prior written and oral agreements, representations, warranties, statements, promises and understandings, and all contemporaneous oral agreements, representations, warranties, statements, promises and understandings, with respect to the subject matter hereof.

#### 10.3 Amendment and Waivers

This Agreement may be amended, modified or supplemented, and compliance with any provision of this Agreement may be waived, only by a writing signed by each of P&C Claims, Licensee and the Escrow Agent.

#### 10.4 Assignment

This Agreement shall be binding upon and inure to the benefit of P&C Claims, Licensee, the Escrow Agent and their respective successors-in-interest and permitted assigns. Except as expressly provided in this Agreement, none of the parties may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties hereto.

#### 10.5 Waivers

With regard to any power, remedy or right provided herein or otherwise available to any party hereunder (1) no waiver or extension of time will be effective unless expressly contained in a writing signed by the waiving party; and (ii) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

## EXHIBIT H

### 10.6 Severability

In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

### 10.7 Counterparts; Deliveries

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or other electronic transmission, shall be treated in all manner and respects and for all purposes as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

### 10.8 Authorized Signatures

The Company and Licensee shall executed Escrow Agreement Exhibits C-1 and C-2 to this Agreement, respectively..

**EXHIBIT H**

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed as of the date first above written.

P&C Claims, Inc., a Delaware Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Licensee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Escrow Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



ESCROW AGREEMENT EXHIBIT A

LICENSED COMPUTER PROGRAMS

LICNESED COMPUTER PROGRAM	

## ESCROW AGREEMENT EXHIBIT B

**FORM OF SOURCE CODE RELEASE REQUEST**  
(INSERT DATE)

The undersigned, as an officer of \_\_\_\_\_ ("Licensee"), hereby certifies that:

1. Licensee holds a license to certain Licensed Computer Programs of P&C Claims, Inc. ("P&C Claims") pursuant to the terms of a License Agreement dated as of \_\_\_\_\_, 20\_\_ (the "License Agreement") between Licensee and P&C Claims.
2. Certain Source Code for the Licensed Computer Programs was deposited by P&C Claims with \_\_\_\_\_, as escrow agent (the "Escrow Agent") pursuant to an Escrow Agreement dated \_\_\_\_\_, 20\_\_ ("Escrow Agreement") among P&C Claims, Licensee, and Escrow Agent. Capitalized terms used herein without definition shall have the meanings set forth in the Escrow Agreement.
3. The Release Conditions for the release of the Source Code under the Escrow Agreement have been met in that:
  - 3.1 **[Describe applicable Release Condition(s)]**
  - 3.2 **[In the case of a Release Condition described in Subparagraph 4.1(iii) of the Escrow Agreement, describe the Source Code to be released]**
4. **Retention of Copyright.** Licensee agrees that it will treat the Source Code in strictest confidence and will only use a single copy of the Source Code for the purpose of maintaining the Licensed Computer Programs for use in accordance with the License Agreement. Except as expressly permitted by this Source Code Release Request, the Escrow Agreement or the License Agreement, Licensee will not directly or indirectly (i) sell, transfer, reproduce, publish, use, disseminate or otherwise disclose any portion of the Source Code or (ii) duplicate, manufacture, reproduce or arrange for or contract with any third party to duplicate, manufacture, reproduce any portion of the Source Code. Licensee shall not allow access to the Source Code under any circumstances to anyone other than Licensee's personnel or third party service providers whose access is strictly necessary for the purposes of maintaining the Licensed Computer Programs and who have executed written agreement to abide by the terms of this Paragraph.
5. **Need for Protections.** Licensee acknowledges that (a) the Licensed Computer Programs and the Source Code are the exclusive property of P&C Claims and

## EXHIBIT H

the Source Code are protected by intellectual property rights; (b) the Licensed Computer Programs and the Source Code are a commercially valuable, proprietary product of P&C Claims; (3) P&C Claims has invested substantial time and economic resources in the design and development of the Licensed Computer Programs and the Source Code, and (d) the Licensed Computer Programs and the Source Code constitute valuable trade secrets of P&C Claims. Breach by Licensee of any agreement contained in this Source Code Release Request can be expected to result in substantial harm to P&C Claims. Although Licensee will be responsible for any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suits arising out of Licensee's breach of Paragraph 4 above, money damages would not be a sufficient remedy for any breach of those provisions. P&C Claims shall be entitled to specific performance and injunctive relief as remedies for any such breach, without the necessity of posting any bond.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

## ESCROW AGREEMENT EXHIBIT C-1

## CERTIFICATE AS TO AUTHORIZED SIGNATURES

Account Name: \_\_\_\_\_

Account Number: \_\_\_\_\_

The specimen signature shown below are the specimen signatures of the individuals who have been designated as Authorized Representative of Company and are authorized to initiate and approve transactions of all types for the above-mentioned account on behalf of the Company.

Name/Title

Specimen Signature

\_\_\_\_\_  
Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Title\_\_\_\_\_  
Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Title\_\_\_\_\_  
Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Title\_\_\_\_\_  
Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Title

## ESCROW AGREEMENT EXHIBIT C-2

## CERTIFICATE AS TO AUTHORIZED SIGNATURES

Account Name: \_\_\_\_\_

Account Number: \_\_\_\_\_

The specimen signature shown below are the specimen signatures of the individuals who have been designated as Authorized Representative of Licensee and are authorized to initiate and approve transactions of all types for the above-mentioned account on behalf of the Licensee.

Name/Title	Specimen Signature
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	

EXHIBIT I

**SAFELY SURRENDERED BABY LAW**

# *Safely* Surrendered



No shame. No blame. No brand.

Go online to [www.safely.org](http://www.safely.org) or call 1-877-22-3733

[www.safely.org](http://www.safely.org)



In Los Angeles County: 1-877-BABY-SAFE 1-877-222-9723

[www.babysafela.org](http://www.babysafela.org)

# Safely Surrendered Baby Law

## What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents to safely surrender a baby within three days of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

## How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially, and safely surrender a baby within three days (72 hours) of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

## What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their baby within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

## Can only a parent bring in the baby?

No. While in most cases a parent will bring in the baby, the Law allows other people to bring in the baby if they have lawful custody.

## Does the parent or surrendering adult have to call before bringing in the baby?

No. A parent or surrendering adult can bring in a baby anytime, 24 hours a day, 7 days a week, as long as the parent or surrendering adult surrenders the baby to someone who works at the hospital or fire station.

## Does the parent or surrendering adult have to tell anything to the people taking the baby?

No. However, hospital or fire station personnel will ask the surrendering party to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the baby. The questionnaire includes a stamped return envelope and can be sent in at a later time.

## What happens to the baby?

The baby will be examined and given medical treatment. Upon release from the hospital, social workers immediately place the baby in a safe and loving home and begin the adoption process.

## What happens to the parent or surrendering adult?

Once the parent or surrendering adult surrenders the baby to hospital or fire station personnel, they may leave at any time.

## Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned, hurt or killed by their parents. You may have heard tragic stories of babies left in dumpsters or public bathrooms. Their parents may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had no one or nowhere to turn for help, they abandoned their babies. Abandoning a baby is illegal and places the baby in extreme danger. Too often, it results in the baby's death. The Safely Surrendered Baby Law prevents this tragedy from ever happening again in California.

## A baby's story

Early in the morning on April 9, 2005, a healthy baby boy was safely surrendered to nurses at Harbor-UCLA Medical Center. The woman who brought the baby to the hospital identified herself as the baby's aunt and stated the baby's mother had asked her to bring the baby to the hospital on her behalf. The aunt was given a bracelet with a number matching the ankle placed on the baby; this would provide some identification in the event the mother changed her mind about surrendering the baby and wished to reclaim the baby in the 14-day period allowed by the Law. The aunt was also provided with a medical questionnaire and said she would have the mother complete and mail back in the stamped return envelope provided. The baby was examined by medical staff and pronounced healthy and full-term. He was placed with a loving family that had been approved to adopt him by the Department of Children and Family Services.





# *Ley de* Entrega de Bebés *Sin Peligro*



*Los recién nacidos pueden ser entregados en forma segura al personal  
de cualquier hospital o cuartel de bomberos del Condado de Los Angeles*

Sin pena. Sin culpa. Sin nombres.

En el Condado de Los Angeles: 1-877-BABY SAFE • 1-877-222-9723

[www.babysafeLA.org](http://www.babysafeLA.org)



# Ley de Entrega de Bebés Sin Peligro

## ¿Qué es la Ley de Entrega de Bebés Sin Peligro?

La Ley de Entrega de Bebés Sin Peligro de California permite a una madre o padre entregar a un recién nacido a cualquier hospital o cuartel de bomberos dentro de los 72 horas del nacimiento. Si el padre o la madre no desea cuidar al bebé, puede entregarlo a un empleado de cualquier hospital o cuartel de bomberos del Condado de Los Angeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazalete y el padre/madre o el adulto que lo entregue recibirá un brazalete igual.

*Cada recién nacido se merece la oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele que tiene otras opciones. Hasta tres días (72 horas) después del nacimiento, se puede entregar un recién nacido al personal de cualquier hospital o cuartel de bomberos del condado de Los Angeles.*

En el Condado de Los Angeles: 1-877-BABY SAFE • 1-877-222-9723

[www.babysafe.org](http://www.babysafe.org)

## ¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura dentro de los tres días (72 horas) del nacimiento. El bebé debe ser entregado a un empleado de cualquier hospital o cuartel de bomberos del Condado de Los Angeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazalete y el padre/madre o el adulto que lo entregue recibirá un brazalete igual.

## ¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden comenzar el proceso de reclamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Angeles al 1-800-540-4000.

## ¿Sólo los padres podrán llevar al recién nacido?

No. Si bien en la mayoría de los casos son los padres los que llevan al bebé, la ley permite que otras personas lo hagan si tienen custodia legal.

## ¿Los padres o el adulto que entrega al bebé deben llamar antes de llevar al bebé?

No. El padre/madre o adulto puede llevar al bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, siempre y cuando entreguen a su bebé a un empleado del hospital o cuartel de bomberos.

## ¿Es necesario que el padre/madre o adulto diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital o cuartel de bomberos le pedirá a la persona que entregue al bebé que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para cuidar bien del bebé. El cuestionario incluye un sobre con el sello postal pagado para enviarlo en otro momento.

## ¿Qué pasará con el bebé?

El bebé será examinado y le brindarán atención médica. Cuando le den el alta del hospital, los trabajadores sociales inmediatamente ubicarán al bebé en un hogar seguro donde estará bien atendido, y se comenzará el proceso de adopción.

## ¿Qué pasará con el padre/madre o adulto que entregue al bebé?

Una vez que los padres o adulto hayan entregado al bebé al personal del hospital o cuartel de bomberos, pueden irse en cualquier momento.

## ¿Por qué se está haciendo esto en California?

La finalidad de la Ley de Entrega de Bebés Sin Peligro es proteger a los bebés para que no sean abandonados, lastimados o muertos por sus padres. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Los padres de esos bebés probablemente hayan estado pasando por dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus bebés porque tenían miedo y no tenían nadie a quien pedir ayuda. El abandono de un recién nacido es ilegal y pone al bebé en una situación de peligro extremo. Muy a menudo el abandono provoca la muerte del bebé. La Ley de Entrega de Bebés Sin Peligro impide que vuelva a suceder esta tragedia en California.

## Historia de un bebé

A la mañana temprana del día 9 de abril de 2005, se entregó un recién nacido saludable a las enfermeras del Harbor-UCLA Medical Center. La mujer que llevó el recién nacido al hospital se dijo a conocer como la tía del bebé, y dijo que la madre le había pedido que llevara al bebé al hospital en su nombre. Le entregaron a la tía un brazalete con un número que coincidía con la pulsera del bebé, esto servía como identificación en caso de que la madre cambiara de opinión con respecto a la entrega del bebé y decidiera recuperarlo dentro del período de 14 días que permite esta ley. También le dieron a la tía un cuestionario médico, y ella dijo que la madre lo llenaría y lo enviaría de vuelta dentro del sobre con franqueo pagado que le habían dado. El personal médico examinó al bebé y se determinó que estaba saludable y a término. El bebé fue ubicado con una buena familia que ya había sido aprobada para adoptarlo por el Departamento de Servicios para Niños y Familias.



**AGREEMENT  
CONTRACTOR'S OBLIGATIONS AS A  
"BUSINESS ASSOCIATE" UNDER THE HEALTH INSURANCE  
PORTABILITY AND ACCOUNTABILITY ACT OF 1996  
AND THE HEALTH CARE INFORMATION TECHNOLOGY  
FOR ECONOMIC AND CLINICAL HEALTH ACT  
(BUSINESS ASSOCIATE AGREEMENT)**

Under this Agreement, Contractor ("Business Associate") provides services ("Services") to County ("Covered Entity") and Business Associate receives, has access to or creates Protected Health Information in order to provide those Services.

Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information ("Privacy Regulations") and the Health Insurance Reform: Security Standards ("the Security Regulations") at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (together, the "Privacy and Security Regulations"). The Privacy and Security Regulations require Covered Entity to enter into a contract with Business Associate ("Business Associate Agreement") in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place.

Further, pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, *title XIII and title IV of Division B*, ("HITECH Act"), effective February 17, 2010, certain provisions of the HIPAA Privacy and Security Regulations apply to Business Associates in the same manner as they apply to Covered Entity and such provisions must be incorporated into the Business Associate Agreement.

This Business Associate Agreement and the following provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Business Associate in compliance with HIPAA's Privacy and Security Regulations and the HITECH Act, as they now exist or may hereafter be amended.

Therefore, the parties agree as follows:

**DEFINITIONS**

1.1 "Breach" has the same meaning as the term "breach" in 45 C.F.R. § 164.402.

- 1.2 "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its employees.
- 1.3 "Electronic Health Record" has the same meaning as the term "electronic health record" in the HITECH Act, 42 U.S.C. section 17921. Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- 1.4 "Electronic Media" has the same meaning as the term "electronic media" in 45 C.F.R. § 160.103. Electronic Media means (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission. The term "Electronic Media" draws no distinction between internal and external data, at rest (that is, in storage) as well as during transmission.
- 1.5 "Electronic Protected Health Information" has the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103. Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.
- 1.6 "Individual" means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.7 "Minimum Necessary" refers to the minimum necessary standard in 45 C.F.R. § 162.502 (b) as in effect or as amended.
- 1.8 "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164, also referred to as the Privacy Regulations.

- 1.9 "Protected Health Information" has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity. "Protected Health Information" includes Electronic Health Information.
- 1.10 "Required By Law" means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
- 1.11 "Security Incident" means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information in, or interference with system operations of, an Information System which contains Electronic Protected Health Information. However, Security Incident does not include attempts to access an Information System when those attempts are not reasonably considered by Business Associate to constitute an actual threat to the Information System.
- 1.12 "Security Rule" means the Security Standards for the Protection of Electronic Health Information also referred to as the Security Regulations at 45 Code of Federal Regulations (C.F.R.) Part 160 and 164.
- 1.13 "Services" has the same meaning as in the body of this Agreement.
- 1.14 "Unsecured Protected Health Information" has the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402.
- 1.15 "Use" or "Uses" mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations.

- 1.16 Terms used, but not otherwise defined in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Regulations and HITECH Act.

## **OBLIGATIONS OF BUSINESS ASSOCIATE**

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:

(a) shall Use and Disclose Protected Health Information only as necessary to perform the Services, and as provided in Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 of this Agreement;

(b) shall Disclose Protected Health Information to Covered Entity upon request;

(c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:

(i) Use Protected Health Information; and

(ii) Disclose Protected Health Information if the Disclosure is Required by Law.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose or in any manner that would constitute a violation of the Privacy Regulations or the HITECH Act if so Used or Disclosed by Covered Entity.

2.2 Prohibited Uses and Disclosures of Protected Health Information. Business Associate:

(a) shall not Use or Disclose Protected Health Information for fundraising or marketing purposes.

(b) shall not disclose Protected Health Information to a health plan for payment or health care relates.

(c) shall not directly or indirectly receive payment in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. This prohibition shall not affect payment by Covered Entity to Business Associate. Covered Entity shall not provide such written consent except upon express approval of the departmental privacy officer and only to the extent permitted by law, including HIPAA and the HITECH Act.

2.3 Adequate Safeguards for Protected Health Information. Business Associate:

- (a) shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Business Associate Agreement. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the Minimum Necessary in accordance with the Privacy Regulation's minimum necessary standard as in effect or as amended.
- (b) as to Electronic Protected Health Information, shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information; effective February 17, 2010, said safeguards shall be in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312, and shall comply with the Security Rule's policies and procedure and documentation requirements.

2.4 Reporting Non-Permitted Use or Disclosure and Security Incidents and Breaches of Unsecured Protected Health Information. Business Associate

- (a) shall report to Covered Entity each Use or Disclosure of Protected Health Information that is made by Business Associate, its employees, representatives, Agents, subcontractors, or other parties under Business Associate's control with access to Protected Health Information but which is not specifically permitted by this Business Associate Agreement or otherwise required by law.
- (b) shall report to Covered Entity each Security Incident of which Business Associate becomes aware.
- (c) shall notify Covered Entity of each Breach by Business Associate, its employees, representatives, agents or subcontractors of Unsecured Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of the Business Associate as determined in accordance with the federal common law of agency.

2.4.1 Immediate Telephonic Report. Except as provided in Section 2.4.3, notification shall be made immediately upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security

Incident or Breach of Unsecured Protected Health Information by telephone call to (562) 940-3335.

- 2.4.2 Written Report. Except as provided in Section 2.4.3, the initial telephonic notification shall be followed by written notification made without unreasonable delay and in no event later than three (3) business days from the date of discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident, or Breach by the Business Associate to the Chief Privacy Officer at:

Chief Privacy Officer  
Kenneth Hahn Hall of Administration  
500 West Temple Street  
Suite 525  
Los Angeles, California 90012  
HIPAA@auditor.lacounty.gov  
(213) 974-2166

- (a) The notification required by section 2.4 shall include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used, or Disclosed; and
- (b) The notification required by section 2.4 shall include, to the extent possible, all information required to provide notification to the Individual under 45 C.F.R. 164.404(c), including:
  - (i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - (ii) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - (iii) Any other details necessary to conduct an assessment of whether there is a risk of harm to the Individual;



- (iv) Any steps Business Associate believes that the Individual could take to protect him or herself from potential harm resulting from the breach;
- (v) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to the Individual, and to protect against any further Breaches; and
- (vi) The name and contact information for the person most knowledge regarding the facts and circumstances of the Breach.

If Business Associate is not able to provide the information specified in section 2.3.2 (a) or (b) at the time of the notification required by section 2.4.2, Business Associate shall provide such information promptly thereafter as such information becomes available.

**2.4.3 Request for Delay by Law Enforcement.** Business Associate may delay the notification required by section 2.4 if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security. If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay notification, notice, or posting for the time period specified by the official; if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.

**2.5 Mitigation of Harmful Effect.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement.

**2.6 Breach Notification.** Business Associate shall, to the extent Covered Entity determines that there has been a Breach of Unsecured Protected Health Information, provide Breach notification for each and every Breach of Unsecured Protected Health Information by Business Associate, its employees, representatives, agents or subcontractors, in a manner that permits Covered Entity to comply with its obligations under Subpart D, Notification in the Case of Breach of Unsecured PHI, of the Privacy and Security Regulations, including:

- (a) Notifying each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, Used, or Disclosed as a result of such Breach;
- (b) The notification required by paragraph (a) of this Section 2.6 shall include, to the extent possible:
  - (i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - (ii) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - (iii) Any steps the Individual should take to protect him or herself from potential harm resulting from the Breach;
  - (iv) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
  - (v) Contact procedures for Individual(s) to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
  - (vi) The notification required by paragraph (a) of this section shall be written in plain language.

Covered Entity, in its sole discretion, may elect to provide the notification required by this Section 2.6, and Business Associate shall reimburse Covered Entity any and all costs incurred by Covered Entity, including costs of notification, internet posting, or media publication, as a result of Business Associate's Breach of Unsecured Protected Health Information.

- 2.7 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

- 2.8 Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy that Protected Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from Covered Entity. Business Associate shall provide copies of that Protected Health Information within five (5) business days after receipt of request from Covered Entity. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.
- 2.9 Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within ten (10) business days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.
- 2.10 Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or subcontractors, in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and/or the HITECH Act which requires an Accounting of Disclosures of Protected Health Information maintained in an Electronic Health Record for treatment, payment, and health care operations.

*[Optional, to be used when all Uses and Disclosures permitted in order to perform the Services will be for the Covered Entity's payment or health care operations activities: However, Business Associate is not required to provide an Accounting of Disclosures that are necessary to perform the Services because such Disclosures are for either payment or health care operations purposes, or both.]*

Any accounting provided by Business Associate under this Section 2.10 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.10, Business Associate shall

document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of request from Covered Entity, information collected in accordance with this Section 2.10 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.

- 2.11 Indemnification. Business Associate shall indemnify, defend, and hold harmless Covered Entity, including its elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, penalties and fines (including regulatory penalties and/or fines), and expenses (including attorney and expert witness fees), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement; Business Associate's obligations under this provision extend to compliance and/or enforcement actions and/or activities, whether formal or informal, of Secretary of the federal Department of Health and Human Services and/or Office for Civil Rights.

### **3.0 OBLIGATION OF COVERED ENTITY**

- 3.1 Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

### **4.0 TERM AND TERMINATION**

- 4.1 Term. The term of this Business Associate Agreement shall be the same as the term of this Agreement. Business Associate's obligations under Sections 2.1 (as modified by Section 4.2), 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 shall survive the termination or expiration of this Agreement.
- 4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in this Agreement, upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall:

- (a) Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;
- (b) Immediately terminate this Agreement if a party has breached a material term of this Agreement and cure is not possible; or
- (c) If neither termination nor cure is feasible, report the violation to the Secretary of the federal Department of Health and Human Services.

**4.3 Disposition of Protected Health Information Upon Termination or Expiration.**

- (a) Except as provided in paragraph (b) of this section, upon termination for any reason or expiration of this Agreement, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

**5.0 MISCELLANEOUS**

- 5.1 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Business Associate Agreement.

- 5.3 Relationship to Services Agreement Provisions. In the event that a provision of this Business Associate Agreement is contrary to another provision of this Agreement, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of this Agreement.
- 5.4 Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy or Security Regulations means the section as in effect or as amended.
- 5.5 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Regulations.
- 5.6 Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Regulations and other privacy laws governing Protected Health Information